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ABSTRACT

The basic purpose behind the Paris Conference was to satisfy the practical needs of developing countries for ready access to educational, scientific, and technical works, without weakening the structure and scope of copyright protection offered by developed countries under both the Universal Copyright Convention and the Berne Convention. This document is a copy of the one sent to the Senate for ratification. (NH)

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2d Session

SENATE

EXECUTIVE
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UNIVERSAL COPYRIGHT CONVENTION, AS REVISED, WITH PROTOCOLS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON JULY 24, 1971, TOGETHER WITH TWO RELATED PROTOCOLS

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY.

MARCH 15, 1972.—Convention and protocols were read the first time and, together with the message and accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for use of the Senate

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LI 003 534

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *March 15, 1972.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a certified copy of the Universal Copyright Convention as revised at Paris on July 24, 1971, together with two related Protocols. I transmit also, for the information of the Senate, the report of the Acting Secretary of State with respect to the Convention.

Essentially, the purpose envisaged in negotiating the Convention was to satisfy the practical needs of developing countries for ready access to educational, scientific, and technical works, without weakening the structure and scope of copyright protection presently offered by developed countries under the two multilateral conventions on copyright.

The 1971 revised Convention represents a fair and effective balance of different interests and will make a significant contribution to the solution of copyright problems. I recommend that the Senate give early and favorable consideration to the Convention and Protocols.

RICHARD NIXON.

(Enclosures: (1) Report of the Acting Secretary of State; (2) Certified copy of the Universal Copyright Convention as revised at Paris, together with two related Protocols.)

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, February 20, 1972.

The PRESIDENT,
The White House:

I have the honor to submit to you a certified copy of the Universal Copyright Convention as revised at Paris on July 24, 1971, together with two Protocols relating thereto. I recommend that the Convention and Protocols be transmitted to the Senate for its advice and consent to ratification.

There are currently two major international copyright conventions: the Universal Copyright Convention and the Berne Copyright Convention. Problems which developed in connection with the Berne Convention, as outlined below, gave rise to a proposal to revise the Universal Copyright Convention. The United States is a contracting party to the Universal Copyright Convention. It is not a party to the Berne Convention.

The Berne Convention, which is the older of the two Conventions, was first negotiated in 1886 and subsequently revised on several occasions, the last being at Stockholm in 1967. During the Stockholm Conference, the contracting parties to the Berne Convention negotiated a Protocol Regarding Developing Countries, which was the result of efforts by several developing nations to secure preferential access to literary works protected by copyright under the Convention. These developing countries were especially interested in acquiring rights to educational works which are produced in developed countries. Under the Protocol copyright protection in developing countries for such works would have been virtually negated. The Protocol was strongly opposed by the publishing industries of various developed countries, including the United States and the United Kingdom. Although the United States is not a party to the Berne Convention, United States authors can secure Berne copyright protection if they publish simultaneously in a country which is party to the Berne Convention. Canada is often used for this purpose. While some 35 parties to the Berne Convention signed the Protocol, there have been up to this time only four ratifications and accessions. The prospects for further action, especially among the important developed countries, are very dim.

The Universal Copyright Convention was negotiated in 1952 largely at the initiative of the United States, which found that its domestic copyright law could not satisfy the requirements stipulated in the Berne Convention (e.g., term of protection). Under the Universal Copyright Convention a country need only provide "national treatment" to the works of other contracting parties. During the negotiation of the Universal Copyright Convention, the members of the Berne Convention expressed concern that the Berne Convention

might lose many of its parties if parties to the Berne Convention could leave that Convention and become parties to the Universal Copyright Convention. To prevent this from occurring, a provision (Article 17) was subsequently introduced into the Universal Copyright Convention which, along with an Appendix Declaration, prohibited contracting parties of Berne from renouncing that Convention and relying solely on the Universal Copyright Convention for international copyright protection. There are, however, no obstacles which prevent countries from being parties to both Conventions. The United States was committed to preserving this "safeguard clause" for as long as the contracting parties to the Berne Convention desired it.

Early in 1969 the Intergovernmental Copyright Committee established under the Universal Copyright Convention, and the Berne Permanent Committee, established under the Berne Convention, adopted resolutions establishing an International Copyright Joint Study Group. Upon the invitation of the United States, they agreed that the Joint Study Group would meet in Washington in September, 1969.

At that meeting, attended by representatives from 25 countries, the "Washington Recommendation" was adopted. It called for the simultaneous revision of both the Universal Copyright Convention and Berne Convention to achieve the following objectives:

(1) In the Universal Copyright Convention the level of protection would be improved by the adoption of certain minimum rights. These would include the rights of reproduction, public performance, and broadcasting. At the same time, special provisions would be included in the Universal Copyright Convention for the benefit of developing countries. Finally, the "Berne safeguard clause" would be suspended to permit developing countries to leave the Berne Convention without penalty under the Universal Copyright Convention.

(2) In the Berne Convention, the Protocol would be separated from the Stockholm Act and, in turn, the developing countries would be able to substitute the special provisions included for their benefit in the Universal Copyright Convention. This would mean that the developing countries could remain in the Berne Convention and would not be forced to exercise the option provided by the suspension of the "Berne safeguard clause." As a protective measure, it was provided that the Stockholm Protocol could not be separated from the Stockholm text until such time as France, Spain, the United Kingdom and the United States had ratified the revised text of the Universal Copyright Convention. The purpose of this provision was to make ratification or accession to the revised text of the Universal Copyright Convention (containing the new concessions for developing countries) the *quid pro quo* for separation of the Stockholm Protocol from the Berne Convention. The Washington Recommendation won the general support of all the countries that attended the meeting.

In December, 1969, the Intergovernmental Copyright Committee and Berne Permanent Committee met to consider the results of the Washington meeting. It was agreed that the preparations for revision of each Convention should be made "in accordance with the considerations stated in the preamble to the Washington Recommendation and the specific recommendations contained therein, including, in particular, the recommendation that the Universal Copyright

Convention and the Berne Convention be revised in revision conferences to be held at the same time and place . . ." In addition they scheduled several preparatory meetings to consider draft texts.

Pursuant to these arrangements, two Ad Hoc Preparatory Committees met in Paris and Geneva in May, 1970. Based largely upon a proposal for revision of the Universal Copyright Convention submitted by the United States, draft texts were prepared for the two conventions. As contrasted with the trend represented by the Stockholm Protocol, several important demands of the developing countries were abandoned at this meeting. These included the concessions respecting the term of copyright, the exclusive right of broadcasting, and the broad right to restrict the protection of literary and artistic works for "teaching, study and research in all fields of education." Accordingly, the concessions for developing countries were limited to restricting the rights of translation and reproduction for certain purposes. The major negotiations in May concerned these points.

The draft texts produced in May were then circulated to governments and interested international non-governmental organizations. As recommended by the resolutions adopted in December, 1969, the Intergovernmental Copyright Committee and Berne Permanent Committee met in extraordinary sessions in September, 1970, to consider the draft texts and to make final preparations for the revision conferences. At these meetings the proposals for revision were further refined.

The revised draft texts were then circulated again to governments and interested international non-governmental organizations.

The Conference for revision of the Universal Copyright Convention was convened at UNESCO House, Paris, on July 5, 1971.

The Co-chairman of the United States Delegation was elected General Rapporteur of the Conference. His report, which is enclosed, contains a comprehensive explanation of the provisions of the Convention, the course of the negotiations, and the organization of the Conference.

The principal new provisions of the Convention are, however, outlined briefly below.

Article IVbis makes reference to Article I. Article I, which remains unchanged from the 1952 Convention, sets forth the undertaking of each Contracting State to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture. The new Article IVbis provides that the rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. These rights apply to works protected under the Convention either in their original form or in any form recognizably derived from the original. It is further provided that any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of the Convention, to such rights, but that any State whose legislation so provides shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

As previously noted, one of the fundamental ideas behind the Washington Recommendation was to have parallel and concurrent revisions of the Universal and Berne Conventions which would make limited compulsory licensing systems available for the benefit of developing countries with respect to translations and reproductions. Article Vbis is the first of the three new articles in the revised Universal Copyright Convention intended to accomplish this goal. The Article sets forth the procedure whereby a Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations may take advantage of the special translation and reproduction provisions in the two Articles (Articles Vter and Vquater) that follow.

Article Vter relates to cases where a translation of a writing has not been published in a language in general use in a particular developing country and provides that the developing country may reduce the seven-year period of the copyright owner's exclusive translating rights to three years. In the case of a translation into a language not in general use in one or more developed countries parties to the Universal Copyright Convention, the period can be further reduced to one year. A license may only be granted to an applicant if he, in accordance with the procedure in the State concerned, establishes either that he has requested and been denied authorization by the owner of the right of translation, or that after due diligence on his part he was unable to find the owner of the right. A license under this Article can be granted only for the purpose of teaching, scholarship or research, and no copies made under a compulsory license may be exported from the developing country. Due provision must be made at the national level to assure that the license provides for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned.

Article Vquater provides that if, after a stated period, copies of a particular edition of a work have not been distributed in a developing country, either to the general public or in connection with systematic instructional activities, at a price reasonably related to that charged in the State for comparable works, then a compulsory license can be obtained to publish that particular edition in the licensing State. The applicable periods of exclusivity, during which no license can be issued for a particular edition, begin on the date of first publication of that edition. In general the period is five years, but a three-year period is applicable to "works of the natural and physical sciences, including mathematics, and of technology," and the term is seven years for "works of fiction, poetry, drama and music, and for art books." A basic condition of the license is that it be granted solely for publication in connection with "systematic instructional activities." This term is intended to include not only activities connected with the formal and informal curriculum of an educational institution, but also systematic out-of-school education. The initial procedure for obtaining a license under this Article is essentially the same as that provided by Articles V and Vter: the applicant must have made efforts in good faith to negotiate a license or find the owner of the right. In addition the export ban and royalty payment provisions applicable to translations are applicable to reproductions.

After stating the general rule that the works subject to compulsory licensing under Article Vquater are "works published in printed or analogous forms of reproduction," the Article provides for the assimilation to these works of "audio-visual fixations including any protected works incorporated therein," but only if the fixations were themselves "prepared and published for the sole purpose of being used in connexion with systematic instructional activities." An audio-visual fixation prepared solely for use in curricular education could be licensed for reproduction in audio-visual form for the same limited purpose, if the reproduction is done from a fixation that itself has been lawfully made. The reproduction-publication license may also cover the "translation of any incorporated text into a language in general use" in the licensing State.

Article XVII of the 1952 Convention and its Appendix Declaration constitute the "Berne Safeguard Clause." It makes the Berne Convention predominant over the Universal Copyright Convention as between two countries which are parties to the two Conventions and precludes a Berne country from withdrawing from that Convention and relying on the Universal Copyright Convention for protection of its works in countries party to both Conventions. Article XVII as revised and its Appendix Declaration remove the latter condition with respect to developing countries, leaving them free, without fear of retaliation or loss of protection, to be a party to either or both Conventions.

The Convention will come into force three months after the deposit of twelve instruments of ratification, acceptance or accession.

Protocols 1 and 2, corresponding in effect to Protocols 1 and 2 of the 1952 Convention, provide, respectively, for the protection of works of stateless persons and refugees, and for the protection of works published for the first time by the United Nations and its specialized agencies or by the Organization of American States. The Protocols will enter into force respectively, for each State on the date of deposit of its instrument of ratification, acceptance, or accession or on the date the Convention enters into force with respect to such State, whichever is the later.

While the United States is not a party to the Berne Convention it is noted that under the provisions of Article 28 of that Convention as revised at Paris, that Revision, including the special provisions for developing countries, will not enter into force unless certain countries including the United States have been bound by the Universal Copyright Convention as revised at Paris.

Throughout the period of development of the present Convention, this Government has engaged in close and continuous consultation with the various United States business and professional groups interested in copyright, either directly or through attorneys representing them in the copyright field. The United States Delegation to the Paris Conference included leading private copyright attorneys and specialists as advisers. The delegation was also fortunate to have three Congressional Advisers: Representatives Robert W. Kastenmeier, Edward G. Biester, Jr., and Abner J. Mikva, of the House Judiciary Committee. A staff member of the Committee also attended.

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Favorable action on the Convention has been taken by the American Bar Association; American Society of Composers, Authors and Publishers; Broadcast Music International; the Association of American Publishers; National Association of Broadcasters; National Music Publishers' Association; and the Recording Industry Association of America.

All interested agencies in the Executive Branch favor the ratification of the Convention.

Early action by the United States with respect to ratification of the Convention will enable the United States to continue to play a leading part in helping to improve international relations in this important field. It is hoped that the Senate will consider and approve the Convention at an early date.

Respectfully submitted.

JOHN N. IRWIN II.

(Enclosures: (1) Certified copy of the Universal Copyright Convention as revised at Paris, together with two related Protocols; (2) Copy of the Report of the General Rapporteur.)

UNIVERSAL COPYRIGHT CONVENTION AS REVISED AT PARIS ON 24 JULY 1971

The Contracting States.

Moved by the desire to ensure in all countries copyright protection of literary, scientific and artistic works,

Convinced that a system of copyright protection appropriate to all nations of the world and expressed in a universal convention, additional to, and without impairing international systems already in force, will ensure respect for the rights of the individual and encourage the development of literature, the sciences and the arts,

Persuaded that such a universal copyright system will facilitate a wider dissemination of works of the human mind and increase international understanding,

Have resolved to revise the Universal Copyright Convention as signed at Geneva on 6 September 1952 (hereinafter called "the 1952 Convention"), and consequently,

Have agreed as follows:

ARTICLE I

Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture.

ARTICLE II

1. Published works of nationals of any Contracting State and works first published in that State shall enjoy in each other Contracting State the same protection as that other State accords to works of its nationals first published in its own territory, as well as the protection specially granted by this Convention.

2. Unpublished works of nationals of each Contracting State shall enjoy in each other Contracting State the same protection as that other State accords to unpublished works of its own nationals, as well as the protection specially granted by this Convention.

3. For the purpose of this Convention any Contracting State may, by domestic legislation, assimilate to its own nationals any person domiciled in that State.

ARTICLE III

1. Any Contracting State which, under its domestic law, requires as a condition of copyright, compliance with formalities such as deposit, registration, notice, notarial certificates, payment of fees or manufacture or publication in that Contracting State, shall regard these requirements as satisfied with respect to all works protected in accordance with this Convention and first published outside its territory and

the author of which is not one of its nationals, if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright.

2. The provisions of paragraph 1 shall not preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published in its territory or works of its nationals wherever published.

3. The provisions of paragraph 1 shall not preclude any Contracting State from providing that a person seeking judicial relief must, in bringing the action, comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with the court or an administrative office, or both, a copy of the work involved in the litigation; provided that failure to comply with such requirements shall not affect the validity of the copyright, nor shall any such requirement be imposed upon a national of another Contracting State if such requirement is not imposed on nationals of the State in which protection is claimed.

4. In each Contracting State there shall be legal means of protecting without formalities the unpublished works of nationals of other Contracting States.

5. If a Contracting State grants protection for more than one term of copyright and the first term is for a period longer than one of the minimum periods prescribed in Article IV, such State shall not be required to comply with the provisions of paragraph 1 of this Article in respect of the second or any subsequent term of copyright.

Article IV

1. The duration of protection of a work shall be governed, in accordance with the provisions of Article II and this Article, by the law of the Contracting State in which protection is claimed.

2. (a) The term of protection for works protected under this Convention shall not be less than the life of the author and twenty-five years after his death. However, any Contracting State which, on the effective date of this Convention in that State, has limited this term for certain classes of works to a period computed from the first publication of the work, shall be entitled to maintain these exceptions and to extend them to other classes of works. For all these classes the term of protection shall not be less than twenty-five years from the date of first publication.

(b) Any Contracting State which, upon the effective date of this Convention in that State, does not compute the term of protection upon the basis of the life of the author, shall be entitled to compute the term of protection from the date of the first publication of the work or from its registration prior to publication, as the case may be, provided the term of protection shall not be less than twenty-five years from the date of first publication or from its registration prior to publication, as the case may be.

(c) If the legislation of a Contracting State grants two or more successive terms of protection, the duration of the first term shall not be less than one of the minimum periods specified in sub-paragraphs (a) and (b).

3. The provisions of paragraph 2 shall not apply to photographic works or to works of applied art; provided, however, that the term of protection in those Contracting States which protect photographic works, or works of applied art in so far as they are protected as artistic works, shall not be less than ten years for each of said classes of works.

4. (a) No Contracting State sha7l be obliged to grant protection to a work for a period longer than that fixed for the class of works to which the work in question belongs, in the case of unpublished works by the law of the Contracting State of which the author is a national, and in the case of published works by the law of the Contracting State in which the work has been first published.

(b) For the purposes of the application of sub-paragraph (a), if the law of any Contracting State grants two or more successive terms of protection, the period of protection of that State shall be considered to be the aggregate of those terms. However, if a specified work is not protected by such State during the second or any subsequent term for any reason, the other Contracting States shall not be obliged to protect it during the second or any subsequent term.

5. For the purposes of the application of paragraph 4, the work of a national of a Contracting State, first published in a non-Contracting State, shall be treated as though first published in the Contracting State of which the author is a national.

6. For the purposes of the application of paragraph 4, in case of simultaneous publication in two or more Contracting States, the work shall be treated as though first published in the State which affords the shortest term; any work published in two or more Contracting States within thirty days of its first publication shall be considered as having been published simultaneously in said Contracting States.

Article IV*bis*

1. The rights referred to in Article I shall include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. The provisions of this Article shall extend to works protected under this Convention either in their original form or in any form recognizably derived from the original.

2. However, any Contracting State may, by its domestic legislation, make exceptions that do not conflict with the spirit and provisions of this Convention, to the rights mentioned in paragraph 1 of this Article. Any State whose legislation so provides, shall nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made.

Article V

1. The rights referred to in Article I shall include the exclusive right of the author to make, publish and authorize the making and publication of translations of works protected under this Convention.

2. However, any Contracting State may, by its domestic legislation, restrict the right of translation of writings, but only subject to the following provisions:

(a) If, after the expiration of a period of seven years from the date of the first publication of a writing, a translation of such writing has not

been published in a language in general use in the Contracting State, by the owner of the right of translation or with his authorization, any national of such Contracting State may obtain a non-exclusive licence from the competent authority thereof to translate the work into that language and publish the work so translated.

(b) Such national shall in accordance with the procedure of the State concerned, establish either that he has requested, and been denied, authorization by the proprietor of the right to make and publish the translation, or that, after due diligence on his part, he was unable to find the owner of the right. A licence may also be granted on the same conditions if all previous editions of a translation in a language in general use in the Contracting State are out of print.

(c) If the owner of the right of translation cannot be found, then the applicant for a licence shall send copies of his application to the publisher whose name appears on the work and, if the nationality of the owner of the right of translation is known, to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State. The licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application.

(d) Due provision shall be made by domestic legislation to ensure to the owner of the right of translation a compensation which is just and conforms to international standards, to ensure payment and transmittal of such compensation, and to ensure a correct translation of the work.

(e) The original title and the name of the author of the work shall be printed on all copies of the published translation. The licence shall be valid only for publication of the translation in the territory of the Contracting State where it has been applied for. Copies so published may be imported and sold in another Contracting State if a language in general use in such other State is the same language as that into which the work has been so translated, and if the domestic law in such other State makes provision for such licences and does not prohibit such importation and sale. Where the foregoing conditions do not exist, the importation and sale of such copies in a Contracting State shall be governed by its domestic law and its agreements. The licence shall not be transferred by the licensee.

(f) The licence shall not be granted when the author has withdrawn from circulation all copies of the work.

Article V*bis*

1. Any Contracting State regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations many, by a notification deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization (hereinafter called "the Director-General") at the time of its ratification, acceptance or accession or thereafter, avail itself of any or all of the exceptions provided for in Articles V*ter* and V*quater*.

2. Any such notification shall be effective for ten years from the date of coming into force of this Convention, or for such part of that ten-year period as remains at the date of deposit of the notification, and may be renewed in whole or in part for further periods of ten years each if, not more than fifteen or less than three months before the expiration of the relevant ten-year period, the contracting State deposits a further notification with the Director-General. Initial notifications may also be made during these further periods of ten years in accordance with the provisions of this Article.

3. Notwithstanding the provisions of paragraph 2, a Contracting State that has ceased to be regarded as a developing country as referred to in paragraph 1 shall no longer be entitled to renew its notification made under the provisions of paragraph 1 or 2, and whether or not it formally withdraws the notification such State shall be precluded from availing itself of the exceptions provided for in Articles V*ter* and V*quater* at the end of the current ten-year period, or at the end of three years after it has ceased to be regarded as a developing country, whichever period expires later.

4. Any copies of a work already made under the exceptions provided for in Articles V*ter* and V*quater* may continue to be distributed after the expiration of the period for which notifications under this Article were effective until their stock is exhausted.

5. Any Contracting State that has deposited a notification in accordance with Article XIII with respect to the application of this Convention to a particular country or territory, the situation of which can be regarded as analogous to that of the States referred to in paragraph 1 of this Article, may also deposit notifications and renew them in accordance with the provisions of this Article with respect to any such country or territory. During the effective period of such notifications, the provisions of Articles V*ter* and V*quater* may be applied with respect to such country or territory. The sending of copies from the country or territory to the Contracting State shall be considered as export within the meaning of Articles V*ter* and V*quater*.

ARTICLE V*ter*

1. (a) Any Contracting State to which Article V*bis* (1) applies may substitute for the period of seven years provided for in Article V (2) a period of three years or any longer period prescribed by its legislation. However, in the case of a translation into a language not in general use in one or more developed countries that are party to this Convention or only the 1952 Convention, the period shall be one year instead of three.

(b) A Contracting State to which Article V*bis* (1) applies may, with the unanimous agreement of the developed countries party to this Convention or only the 1952 Convention and in which the same language is in general use, substitute, in the case of translation into that language, for the period of three years provided for in sub-paragraph (a) another period as determined by such agreement but not shorter than one year. However, this sub-paragraph shall not apply where the language in question is English, French or Spanish. Notification of any such agreement shall be made to the Director-General.

(c) The licence may only be granted if the applicant, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the owner of the right of translation, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre which may have been designated in a notification to that effect deposited with the Director-General by the government of the State in which the publisher is believed to have his principal place of business.

(d) If the owner of the right of translation cannot be found, the applicant for a licence shall send, by registered airmail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre as mentioned in sub-paragraph (c). If no such centre is notified he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization.

2. (a) Licences obtainable after three years shall not be granted under this Article until a further period of six months has elapsed and licences obtainable after one year until a further period of nine months has elapsed. The further period shall begin either from the date of the request for permission to translate mentioned in paragraph 1 (c) or, if the identity or address of the owner of the right of translation is not known, from the date of dispatch of the copies of the application for a licence mentioned in paragraph 1 (d).

(b) Licences shall not be granted if a translation has been published by the owner of the right of translation or with his authorization during the said period of six or nine months.

3. Any licence under this Article shall be granted only for the purpose of teaching, scholarship or research.

4. Any licence granted under this Article shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for.

(b) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State granting the licence. If the writing bears the notice specified in Article III (1) the copies shall bear the same notice.

(c) The prohibition of export provided for in sub-paragraph (a) shall not apply where a governmental or other public entity of a State which has granted a licence under this Article to translate a work into a language other than English, French or Spanish sends copies of a translation prepared under such licence to another country if:

(i) the recipients are individuals who are nationals of the Contracting State granting the licence, or organizations grouping such individuals;

(ii) the copies are to be used only for the purpose of teaching, scholarship or research;

(iii) the sending of the copies and their subsequent distribution to recipients is without the object of commercial purpose; and

(iv) the country to which the copies have been sent has agreed with the Contracting State to allow the receipt, distribution or both and the Director-General has been notified of such agreement by any one of the governments which have concluded it.

5. Due provision shall be made at the national level to ensure:

(a) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(b) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

6. Any licence granted by a Contracting State under this Article shall terminate if a translation of the work in the same language with substantially the same content as the edition in respect of which the licence was granted is published in the said State by the owner of the right of translation or with his authorization, at a price reasonably related to that normally charged in the same State for comparable works. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

7. For works which are composed mainly of illustrations a licence to translate the text and to reproduce the illustrations may be granted only if the conditions of Article V*quater* are also fulfilled.

8. (a) A licence to translate a work protected under this Convention, published in printed or analogous forms of reproduction, may also be granted to a broadcasting organization having its headquarters in a Contracting State to which Article V*bis* (1) applies, upon an application made in that State by the said organization under the following conditions:

(i) the translation is made from a copy made and acquired in accordance with the laws of the Contracting State;

(ii) the translation is for use only in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;

(iii) the translation is used exclusively for the purposes set out in condition (ii), through broadcasts lawfully made which are intended for recipients on the territory of the Contracting State, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;

(iv) sound or visual recordings of the translation may be exchanged only between broadcasting organizations having their headquarters in the Contracting State granting the licence; and

(v) all uses made of the translation are without any commercial purpose.

(b) Provided all of the criteria and conditions set out in subparagraph (a) are met, a licence may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(c) Subject to sub-paragraph (a) and (b), the other provisions of this Article shall apply to the grant and exercise of the licence.

9. Subject to the provisions of this Article, any licence granted under this Article shall be governed by the provisions of Article V, and shall continue to be governed by the provisions of Article V and of this Article, even after the seven-year period provided for in Article V (2) has expired. However, after the said period has expired, the licencee shall be free to request that the said licence be replaced by a new licence governed exclusively by the provisions of Article V.

ARTICLE V*quater*

1. Any Contracting State to which Article V*bis* (1) applies may adopt the following provisions:

(a) If, after the expiration of (i) the relevant period specified in sub-paragraph (c) commencing from the date of first publication of a particular edition of a literary, scientific or artistic work referred to in paragraph 3, or (ii) any longer period determined by national legislation of the State, copies of such edition have not been distributed in that State to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works, by the owner of the right of reproduction or with his authorization, any national of such State may obtain a non-exclusive licence from the competent authority to publish such edition at that or a lower price for use in connexion with systematic instructional activities. The licence may only be granted if such national, in accordance with the procedure of the State concerned, establishes either that he has requested, and been denied, authorization by the proprietor of the right to publish such work, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as he makes his request he shall inform either the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization or any national or regional information centre referred to in sub-paragraph (d).

(b) A licence may also be granted on the same conditions if, for a period of six months, no authorized copies of the edition in question have been on sale in the State concerned to the general public or in connexion with systematic instructional activities at a price reasonably related to that normally charged in the State for comparable works.

(c) The period referred to in sub-paragraph (a) shall be five years except that:

(i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;

(ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(d) If the owner of the right of reproduction cannot be found, the applicant for a licence shall send, by registered air mail, copies of his application to the publisher whose name appears on the work and to any national or regional information centre identified as such in a notification deposited with the Director-General by the State in which the publisher is believed to have his principal place of business. In the absence of any such notification, he shall also send a copy to the international copyright information centre established by the United Nations Educational, Scientific and Cultural Organization. The licence

shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application.

(e) Licences obtainable after three years shall not be granted under this Article:

(i) until a period of six months has elapsed from the date of the request for permission referred to in sub-paragraph (a) or, if the identity or address of the owner of the right of reproduction is unknown, from the date of the dispatch of the copies of the application for a licence referred to in sub-paragraph (d);

(ii) if any such distribution of copies of the edition as is mentioned in sub-paragraph (a) has taken place during that period.

(f) The name of the author and the title of the particular edition of the work shall be printed on all copies of the published reproduction. The licence shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for. The licence shall not be transferable by the licensee.

(g) Due provision shall be made by domestic legislation to ensure an accurate reproduction of the particular edition in question.

(h) A licence to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

(i) where the translation was not published by the owner of the right of translation or with his authorization;

(ii) where the translation is not in a language in general use in the State with power to grant the licence.

2. The exceptions provided for in paragraph 1 are subject to the following additional provisions:

(a) Any copy published in accordance with a licence granted under this Article shall bear a notice in the appropriate language stating that the copy is available for distribution only in the Contracting State to which the said licence applies. If the edition bears the notice specified in Article III (1), the copies shall bear the same notice.

(b) Due provision shall be made at the national level to ensure:

(i) that the licence provides for just compensation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in the two countries concerned; and

(ii) payment and transmittal of the compensation; however, should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(c) Whenever copies of an edition of a work are distributed in the Contracting State to the general public or in connexion with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the State for comparable works, any licence granted under this Article shall terminate if such edition is in the same language and is substantially the same in content as the edition published under the licence. Any copies already made before the licence is terminated may continue to be distributed until their stock is exhausted.

(d) No licence shall be granted when the author has withdrawn from circulation all copies of the edition in question.

3. (a) Subject to sub-paragraph (b), the literary, scientific or artistic works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) The provisions of this Article shall also apply to reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the State with power to grant the licence; always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

ARTICLE VI

"Publication", as used in this Convention, means the reproduction in tangible form and the general distribution to the public of copies of a work from which it can be read or otherwise visually perceived.

ARTICLE VII

This Convention shall not apply to works or rights in works which, at the effective date of this Convention in a Contracting State where protection is claimed, are permanently in the public domain in the said Contracting State.

ARTICLE VIII

1. This Convention, which shall bear the date of 24 July 1971, shall be deposited with the Director-General and shall remain open for signature by all States party to the 1952 Convention for a period of 120 days after the date of this Convention. It shall be subject to ratification or acceptance by the signatory States.

2. Any State which has not signed this Convention may accede thereto.

3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Director-General.

ARTICLE IX

1. This Convention shall come into force three months after the deposit of twelve instruments of ratification, acceptance or accession.

2. Subsequently, this Convention shall come into force in respect of each State three months after that State has deposited its instrument of ratification, acceptance or accession.

3. Accession to this Convention by a State not party to the 1952 Convention shall also constitute accession to that Convention; however, if its instrument of accession is deposited before this Convention comes into force, such State may make its accession to the 1952 Convention conditional upon the coming into force of this Convention. After the coming into force of this Convention, no State may accede solely to the 1952 Convention.

4. Relations between States party to this Convention and States that are party only to the 1952 Convention, shall be governed by the 1952 Convention. However, any State party only to the 1952 Convention may, by a notification deposited with the Director-General, declare that it will admit the application of the 1971 Convention to works of its nationals or works first published in its territory by all States party to this Convention.

Article X

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, such measures as are necessary to ensure the application of this Convention.

2. It is understood that at the date this Convention comes into force in respect of any State, that State must be in a position under its domestic law to give effect to the terms of this Convention.

Article XI

1. An Intergovernmental Committee is hereby established with the following duties:

(a) to study the problems concerning the application and operation of the Universal Copyright Convention;

(b) to make preparation for periodic revisions of this Convention;

(c) to study any other problems concerning the international protection of copyright, in co-operation with the various interested international organizations, such as the United Nations Educational, Scientific and Cultural Organization, the International Union for the Protection of Literary and Artistic Works and the Organization of American States;

(d) to inform States party to the Universal Copyright Convention as to its activities.

2. The Committee shall consist of the representatives of eighteen States party to this Convention or only to the 1952 Convention.

3. The Committee shall be selected with due consideration to a fair balance of national interests on the basis of geographical location, population, languages and stage of development.

4. The Director-General of the United Nations Educational, Scientific and Cultural Organization, the Director-General of the World Intellectual Property Organization and the Secretary-General of the Organization of American States, or their representatives, may attend meetings of the Committee in an advisory capacity.

Article XII

The Intergovernmental Committee shall convene a conference for revision whenever it deems necessary, or at the request of at least ten States party to this Convention.

Article XIII

1. Any Contracting State may, at the time of deposit of its instrument of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Director-General that this Convention shall apply to all or any of the countries or territories for the international relations of which it is responsible and this Convention shall thereupon apply to the countries or territories named in such notification after the expiration of the term of three months provided for in Article IX. In the absence of such notification, this Convention shall not apply to any such country or territory.

2. However, nothing in this Article shall be understood as implying the recognition or tacit acceptance by a Contracting State of the

factual situation concerning a country or territory to which this Convention is made applicable by another Contracting State in accordance with the provisions of this Article.

ARTICLE XIV

1. Any Contracting State may denounce this Convention in its own name or on behalf of all or any of the countries or territories with respect to which a notification has been given under Article XIII. The denunciation shall be made by notification addressed to the Director-General. Such denunciation shall also constitute denunciation of the 1952 Convention.

2. Such denunciation shall operate only in respect of the State or of the country or territory on whose behalf it was made and shall not take effect until twelve months after the date of receipt of the notification.

ARTICLE XV

A dispute between two or more Contracting States concerning the interpretation or application of this Convention, not settled by negotiation, shall, unless the States concerned agree on some other method of settlement, be brought before the International Court of Justice for determination by it.

ARTICLE XVI

1. This Convention shall be established in English, French, and Spanish. The three texts shall be signed and shall be equally authoritative.

2. Official texts of this Convention shall be established by the Director-General, after consultation with the governments concerned, in Arabic, German, Italian and Portuguese.

3. Any Contracting State or group of Contracting States shall be entitled to have established by the Director-General other texts in the language of its choice by arrangement with the Director-General.

4. All such texts shall be annexed to the signed texts of this Convention.

ARTICLE XVII

1. This Convention shall not in any way affect the provisions of the Berne Convention for the Protection of Literary and Artistic Works or membership in the Union created by that Convention.

2. In application of the foregoing paragraph, a declaration has been annexed to the present Article. This declaration is an integral part of this Convention for the States bound by the Berne Convention on 1 January 1951, or which have or may become bound to it at a later date. The signature of this Convention by such States shall also constitute signature of the said declaration, and ratification, acceptance or accession by such States shall include the declaration, as well as this Convention.

Article XVIII

This Convention shall not abrogate multilateral or bilateral copyright conventions or arrangements that are or may be in effect exclusively between two or more American Republics. In the event of any difference either between the provisions of such existing conventions or arrangements and the provisions of this Convention, or between the provisions of this Convention and those of any new convention or arrangement which may be formulated between two or more American Republics after this Convention comes into force, the convention or arrangement most recently formulated shall prevail between the parties thereto. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date this Convention comes into force in such State shall not be affected.

Article XIX

This Convention shall not abrogate multilateral or bilateral conventions or arrangements in effect between two or more Contracting States. In the event of any difference between the provisions of such existing conventions or arrangements and the provisions of this Convention, the provisions of this Convention shall prevail. Rights in works acquired in any Contracting State under existing conventions or arrangements before the date on which this Convention comes into force in such State shall not be affected. Nothing in this Article shall affect the provisions of Articles XVII and XVIII.

Article XX

Reservations to this Convention shall not be permitted.

Article XXI

1. The Director-General shall send duly certified copies of this Convention to the States interested and to the Secretary-General of the United Nations for registration by him.
2. He shall also inform all interested States of the ratifications, acceptances and accessions which have been deposited, the date on which this Convention comes into force, the notifications under this Convention and denunciations under Article XIV.

Appendix Declaration Relating to Article XVII

The States which are members of the International Union for the Protection of Literary and Artistic Works (hereinafter called "the Berne Union") and which are signatories to this Convention,

Desiring to reinforce their mutual relations on the basis of the said Union and to avoid any conflict which might result from the coexistence of the Berne Convention and the Universal Copyright Convention,

Recognizing the temporary need of some States to adjust their level of copyright protection in accordance with their stage of cultural, social and economic development,

Have, by common agreement, accepted the terms of the following declaration:

(a) Except as provided by paragraph (b), works which, according to the Berne Convention, have as their country of origin a country which has withdrawn from the Berne Union after 1 January 1951, shall not be protected by the Universal Copyright Convention in the countries of the Berne Union;

(b) Where a Contracting State is regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations, and has deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization, at the time of its withdrawal from the Berne Union, a notification to the effect that it regards itself as a developing country, the provisions of paragraph (a) shall not be applicable as long as such State may avail itself of the exceptions provided for by this Convention in accordance with Article V*bis*;

(c) The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union in so far as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the Berne Union.

Resolution Concerning Article XI

The Conference for Revision of the Universal Copyright Convention,

Having considered the problems relating to the Intergovernmental Committee provided for in Article XI of this Convention, to which this resolution is annexed,

Resolves that:

1. At its inception, the Committee shall include representatives of the twelve States members of the Intergovernmental Committee established under Article XI of the 1952 Convention and the resolution annexed to it, and, in addition, representatives of the following States: Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia.

2. Any States that are not party to the 1952 Convention and have not acceded to this Convention before the first ordinary session of the Committee following the entry into force of this Convention shall be replaced by other States to be selected by the Committee at its first ordinary session in conformity with the provisions of Article XI (2) and (3).

3. As soon as this Convention comes into force the Committee as provided for in paragraph 1 shall be deemed to be constituted in accordance with Article XI of this Convention.

4. A session of the Committee shall take place within one year after the coming into force of this Convention; thereafter the Committee shall meet in ordinary session at intervals of not more than two years.

5. The Committee shall elect its Chairman and two Vice-Chairmen. It shall establish its Rules of Procedure having regard to the following principles:

(a) The normal duration of the term of office of the members represented on the Committee shall be six years with one-third retiring every two years, it being however understood that, of the original terms of office, one-third shall expire at the end of the Committee's second ordinary session which will follow the entry into force of this Convention, a further third at the end of its third ordinary session, and the remaining third at the end of its fourth ordinary session.

(b) The rules governing the procedure whereby the Committee shall fill vacancies, the order in which terms of membership expire, eligibility for re-election, and election procedures, shall be based upon a balancing of the needs for continuity of membership and rotation of representation, as well as the considerations set out in Article XI (3).

Expresses the wish that the United Nations Educational, Scientific and Cultural Organization provide its Secretariat.

In faith whereof the undersigned, having deposited their respective full powers, have signed this Convention.

DONE at Paris, this twenty-fourth day of July 1971, in a single copy.

For the Federal Republic of Germany:
RUPPRECHT VON KELLER
EUGEN ULMER

For Andorra:
For the Argentine Republic:
For the Commonwealth of Australia:
For the Republic of Austria:
For the Kingdom of Belgium:
Baron PAPEIANS DE MORCHOVEN
28 juillet 1971

For the Federative Republic of Brazil:
EVERALDO DAYRELL DE LIMA

For Canada:
For the Republic of Chile:
For the Republic of Costa Rica:
CARLOS CORRALES

For the Republic of Cuba:
For the Kingdom of Denmark:
W. WEINCKE

For the Republic of Ecuador:
For the Spanish State:
EMILIO GARRIGUES

For the United States of America:
BRUCE C. LADD, JR.
ABRAHAM L. KAMINSTEIN

For the Republic of Finland:
R. R. Seppälä
November 12th 1971

For the French Republic:
PIERRE CHARPENTIER
A. SAINT-MLEUX

For the Republic of Ghana:
For the Kingdom of Greece:
For the Republic of Guatamala:
ad referendum
FRANCISCO LINARES ARANDA

For the Republic of Haiti:
For the Hungarian People's Republic:
TIMÁR ISTVÁN
For the Republic of India:
ad referendum
KANTI CHAUDHURI
S. BALAKRISHNAN
For Ireland:
For the Republic of Iceland:
For the State of Israel:
MAYER GABAY
For the Italian Republic:
P. ARCHI
For Japan:
YOSHIHIRO NAKAYAMA
K. ADACHI
22 octobre 1971
For the Republic of Kenya:
D. J. COWARD
For the Khmer Republic:
For the Kingdom of Laos:
For the Lebanese Republic:
SALAH STÉTIÉ
For the Republic of Liberia:
AUGUSTINE D. JALLAH
For the Principality of Liechtenstein:
GERLICZY-BURIAN
For the Grand Duchy of Luxembourg:
For the Republic of Malawi:
For Malta:
For Mauritius:
R. CHASLE
For the United Mexican States:
F. Cuevas Cancino
For the Principality of Monaco:
FALAIZE
For the Republic of Nicaragua:
For the Federal Republic of Nigeria:
For the Kingdom of Norway:
HERSLEB VOGT
20 novembre 1971

For New Zealand:
For Pakistan:
For the Republic of Panama:
For the Republic of Paraguay:
For the Kingdom of the Netherlands:

W. L. HAARDT
J. VERHOEVE

For the Republic of Peru:
For the Republic of the Philippines:
For the Portuguese Republic:
For the United Kingdom of Great Britain and Northern Ireland:

E. ARMITAGE
WILLIAM WALLACE

For the Holy See:

E. ROVIDA

For the Kingdom of Sweden:

HANS DANELIUS

For the Swiss Confederation:

PEDRAZZINI

For the Czechoslovak Socialist Republic:
For the Republic of Tunisia:

RAFIK SAÏD

For the Republic of Venezuela:
For the Socialist Federal Republic of Yugoslavia:

A. JELIĆ

For the Republic of Zambia:

PROTOCOL 1

Annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of Stateless persons and refugees

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

(1) Stateless persons and refugees who have their habitual residence in a State party to this Protocol shall, for the purposes of the 1971 Convention, be assimilated to the nationals of that State.

(2)(*a*) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(*b*) This Protocol shall enter into force in respect of each State, on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

(*c*) On the entry into force of this Protocol in respect of a State not party to Protocol 1 annexed to the 1952 Convention, the latter Protocol shall be deemed to enter into force in respect of such State.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Paris this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

For the Federal Republic of Germany:
RUPPRECHT VON KELLER
EUGEN ULMER

For Andorra:
For the Argentine Republic:
For the Commonwealth of Australia:
For the Republic of Austria:
For the Kingdom of Belgium:
BARON PAPEIANS DE MORCHOVEN 28 JUILLET 1971

For the Federative Republic of Brazil:
EVERALDO DAYRELL DE LIMA

For Canada:
For the Republic of Chile:
For the Republic of Costa Rica:
CARLOS CORRALES

For the Republic of Cuba:
For the Kingdom of Denmark:
W. WEINCKE

For the Republic of Ecuador:
For the Spanish State:
EMILIO GARRIGUES

For the United States of America:
BRUCE C. LADD, Jr.
ABRAHAM L. KAMINSTEIN

For the Republic of Finland:
R. R. SEPPÄLÄ
November 20th 1971

For the French Republic:
PIERRE CHARPENTIER
A. SAINT-MLEUX

For the Republic of Ghana:
For the Kingdom of Greece:
For the Republic of Guatemala:
ad referendum
FRANCISCO LINARES ARANDA

For the Republic of Haiti:
For the Hungarian People's Republic:

For the Republic of India:
ad referendum
KANTI CHAUDHURI
S. BALAKRISHNAN

For Ireland:

For the Republic of Iceland:

For the State of Israel:
MAYER GABAY

For the Italian Republic:
P. ARCHI

For Japan:
YOSHIHIRO NAKAYAMA
K. ADACHI
22 octobre 1971

For the Republic of Kenya:
D. J. COWARD

For the Khmer Republic:

For the Kingdom of Laos:

For the Lebanese Republic:
SALAH STÉTIÉ

For the Republic of Liberia:
AUGUSTINE D. JALLAH

For the Principality of Liechtenstein:
GERLICZY-BURIAN

For the Grand Duchy of Luxembourg:

For the Republic of Malawi:

For Malta:

For Mauritius:

For the United Mexican States:
F. CUEVAS CANCINO

For the Principality of Monaco:
FALAIZE

For the Republic of Nicaragua:

For the Federal Republic of Nigeria:

For the Kingdom of Norway:
HERSLEB VOGT
20 novembre 1971

For New Zealand:

For Pakistan:

For the Republic of Panama:

For the Republic of Paraguay:

For the Kingdom of the Netherlands:
W. L. HAARDT
J. VERHOEVE

For the Republic of Peru:

For the Republic of the Philippines:

For the Portuguese Republic:

For the United Kingdom of Great Britain and Northern Ireland:
E. ARMITAGE
WILLIAM WALLACE

For the Holy See:
E. ROVIDA

For the Kingdom of Sweden:
HANS DANELIUS
For the Swiss Confederation:
PEDRAZZINI
For the Czechoslovak Socialist Republic:
For the Republic of Tunisia:
RAFIK SAÏD
For the Republic of Venezuela:
For the Socialist Federal Republic of Yugoslavia:
A. JELIĆ
For the Republic of Zambia:

PROTOCOL 2

Annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations

The States party hereto, being also party to the Universal Copyright Convention as revised at Paris on 24 July 1971 (hereinafter called "the 1971 Convention"),

Have accepted the following provisions:

(1) (*a*) The protection provided for in Article II (1) of the 1971 Convention shall apply to works published for the first time by the United Nations, by the Specialized Agencies in relationship therewith, or by the Organization of American States.

(*b*) Similarly, Article II (2) of the 1971 Convention shall apply to to the said organization or agencies.

(2) (*a*) This Protocol shall be signed and shall be subject to ratification or acceptance, or may be acceded to, as if the provisions of Article VIII of the 1971 Convention applied hereto.

(*b*) This Protocol shall enter into force for each State on the date of deposit of the instrument of ratification, acceptance or accession of the State concerned or on the date of entry into force of the 1971 Convention with respect to such State, whichever is the later.

In faith whereof the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Paris, this twenty-fourth day of July 1971, in the English, French and Spanish languages, the three texts being equally authoritative, in a single copy which shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The Director-General shall send certified copies to the signatory States, and to the Secretary-General of the United Nations for registration.

For the Federal Republic of Germany:
RUPPRECHT VON KELLER
EUGEN ULMER
For Andorra:
For the Argentine Republic:
For the Commonwealth of Australia:
For the Republic of Austria:
For the Kingdom of Belgium:
BARON PAPEIANS DE MORCHOVEN
28 juillet 1971

For the Federative Republic of Brazil:
EVERALDO DAYRELL DE LIMA
For Canada:
For the Republic of Chile:
For the Republic of Costa Rica:
CARLOS CORRALES
For the Republic of Cuba:
For the Kingdom of Denmark:
W. WEINCKE
For the Republic of Ecuador:
For the Spanish State:
EMILIO GARRIGUES
For the United States of America:
BRUCE C. LADD, Jr.
ABRAHAM L. KAMINSTEIN
For the Republic of Finland:
R. R. SEPPÄLÄ
November 20th 1971
For the French Republic:
PIERRE CHARPENTIER
A. SAINT-MLEUX
For the Republic of Ghana:
For the Kingdom of Greece:
For the Republic of Guatemala:
ad referendum
FRANCISCO LINARES ARANDA
For the Republic of Haiti:
For the Hungarian People's Republic:
TIMÁR ISTVÁN
For the Republic of India:
ad referendum
KANTI CHAUDHURI
S. BALAKRISHNAN
For Ireland:
For the Republic of Iceland:
For the State of Israel:
MAYER GABAY
For the Italian Republic:
P. ARCHI
For Japan:
YOSHIHIRO NAKAYAMA
K. ADACHI
22 octobre 1971
For the Republic of Kenya:
D. J. COWARD
For the Khmer Republic:
For the Kingdom of Laos:
For the Lebanese Republic:
SALAH STÉTIÉ
For the Republic of Liberia:
AUGUSTINE D. JALLAH
For the Principality of Liechtenstein:
GERLICZY-BURIAN

For the Grand Duchy of Luxembourg:
For the Republic of Malawi:
For Malta:
For Mauritius:
R. CHASLE
For the United Mexican States:
F. CUEVAS CANCINO
For the Principality of Monaco:
FALAIZE
For the Republic of Nicaragua:
For the Federal Republic of Nigeria:
For the Kingdom of Norway:
HERSLEB VOGT
20 novembre 1971
For New Zealand:
For Pakistan:
For the Republic of Panama:
For the Republic of Paraguay:
For the Kingdom of the Netherlands:
W. L. HAARDT
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For the Republic of Peru:
For the Republic of the Philippines:
For the Portuguese Republic:
For the United Kingdom of Great Britain and Northern Ireland:
E. ARMITAGE
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For the Holy See:
E. ROVIDA
For the Kingdom of Sweden:
HANS DANELIUS
For the Swiss Confederation:
PEDRAZZINI
For the Czechoslovak Socialist Republic:
For the Republic of Tunisia:
RAFIK SAÏD
For the Republic of Venezuela:
For the Socialist Federal Republic of Yugoslavia:
A. JELIĆ
For the Republic of Zambia:

Certified a true and complete copy of the original of the Universal Copyright Convention as revised at Paris on 24 July 1971, of the Protocol 1 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to works of Stateless persons and refugees and of the Protocol 2 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971 concerning the application of that Convention to the works of certain international organizations.

Paris, 24. 12. 1971 Claude Lussier.

Director, Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization.

Report of the General Rapporteur of the Conference for Revision of the Universal Copyright Convention Unesco House, Paris 5–24 July 1971

INTRODUCTION

1. It is my honour as General Rapporteur to present the following report of the July 1971 Conference for Revision of the Universal Copyright Convention. The summary records of the work of both the plenary sessions and the Main Commission contain a chronological record of the debates, and my purpose here is not to duplicate that account. It is, instead, to report and analyse the final accomplishments of the Conference, including the text adopted by the delegates and the interpretations given by the Conference of a number of provisions.

2. Unless the context makes it necessary, I shall not attempt to indicate at what point in the Conference a particular discussion took place, or to differentiate between discussions in the plenary sessions and those in the Main Commission. For simplicity's sake, I shall also use an abbreviated formula when identifying specific documents (for example: "UCC/13" rather than "INLA/UCC/13, Paris, 7 July 1971, Original English").

3. The remarkable series of developments and preparatory work leading up to this revision conference are well summarized in the Introductory Report prepared by the Unesco Secretariat (UCC/4), and will not be repeated here. The programme of the Conference was based upon a text proposed by the Intergovernmental Copyright Committee at its second extraordinary session held in Paris in September 1970 (UCC/3), and I shall refer to it henceforth as the "IGCC text". Fortunately, the basic system for numbering sections has remained consistent from the 1952 Universal Copyright Convention through the IGCC text to the revised text adopted by the Paris Conference.

4. I shall exercise the prerogatives of my office to make a few personal remarks at the end of this report, but there is something I feel I should say now. Consider the task facing this Conference: to prepare a revised text of a world-wide convention on a highly complex and technical subject; to reconcile widely divergent purposes and needs; to make the revised text as consistent as possible with concurrent revisions in the quite different Berne Copyright Convention; and to do all this in an extremely short time. The successful accomplishment of this task strikes me as extraordinary; noting the absence of the usual bitter speeches about the need for "a spirit of international cooperation", I realized they were not necessary because the spirit was really there For me, at least, the outcome of the Paris Conference exemplifies a remark of William James that "real culture lives by sympathies and admirations, not by dislikes and disdains".

THE PURPOSE AND ORGANIZATION OF THE CONFERENCE

5. As it emerged from a plethora of preparatory meetings going back to 1966, the basic purpose behind the Paris Conference was less than a complete revision of the Universal Copyright Convention. Essentially its purpose was to satisfy the practical needs of developing countries for

ready access to educational, scientific, and technical works, without weakening the structure and scope of copyright protection offered by developed countries under both the Universal Copyright Convention and the Berne Convention. The IGCC text was drafted with this vital but limited goal in mind.

6. Under the Rules of Procedure adopted by the Conference, the plenary sessions and meetings of the Main Commission were held in public. All States party to the Universal Copyright Convention were entitled to send delegates with the right of participation and voting. Non-voting observers could be sent by States members of Unesco or or other organizations with the United Nations system, and by various other intergovernmental and international non-governmental organizations. In all, 45 States Party to the Universal Copyright Convention sent delegations, and the Conference was attended by observers from 30 other States, 3 intergovernmental organizations and 16 international non-governmental organizations. The working languages of the Conference were English, French, and Spanish, and in accordance with Rule 29 of the Rules of Procedure, the delegation of the Federal Republic of Germany provided an interpretation into English of its members' statements made in German (UCC/INF. 5).

7. A final list of the participants in the Paris Conference will be found in UCC/INF. 4 and a complete list of its officers appears in UCC/INF. 7. As noted in paragraph 13 of this report, 27 States were empowered to sign the revised Convention.

8. Because of their interrelationship and, in some cases, their interdependence, the Conferences for revision of the Universal Copyright Convention and the Berne Convention, in the words of Resolution No. 1 (XR. 2) adopted by the Intergovernmental Copyright Committee at its second extraordinary session on 11 September 1970, were "held at the same time and place". This is, at the generous invitation of Unesco, the two revision Conferences both met at Unesco House in Paris from 5 July through 24 July 1971, but none of their respective sessions were held simultaneously.

9. To avoid overlapping an intricate work programme was drafted by the Secretariat (UCC/INF. 2), and it was possible to adhere to this schedule for the most part. In effect, the UCC Conference met first, with plenary sessions during the morning of 5 July 1971, part of the afternoon of that day, and the first part of the morning of 6 July, and with meetings of the UCC Main Commission for the remainder of the week, beginning on the morning of Tuesday, 6 July, and continuing until late afternoon on Saturday, 10 July. After an opening session on 5 July, the Plenary Assembly of the Berne Revision Conference met again on Monday, 12 July, and the meetings of the Berne Main Commission also started on that day. It then adjourned to allow the UCC Drafting Committee to prepare provisional texts of the articles of mutual concern to the two Conferences, on the basis of decisions already taken by the UCC Main Commission. The UCC Drafting Committee held an all-day session on Tuesday, 13 July, and finished a draft text in an early morning session on Friday, 15 July. The last week was divided between the two Conferences, with formal signature of the two new conventions on Saturday, 24 July 1971. With this tight schedule it is easy to understand the anticipation with which all delegates awaited Bastille Day, 14 July 1971, and the pleasure with which they joined in celebrating the French national holiday.

OPENING SESSION

10. Mr. René Maheu, Director-General of the United Nations Educational, Scientific and Cultural Organization, opened the Conference with an eloquent address (DG/11/6) welcoming the delegates on behalf of Unesco. The Director-General noted the apparent contradiction between the great needs for access to knowledge by countries with scarce resources and the moral and material interest of authors, but expressed his firm personal conviction that, far from being irreconcilable, these aims are actually complementary. He stressed the importance of the Conference's work not only in its potential short-range benefits but also for the progress of mankind. Speaking of culture as "the fullest synthesis of the various activities and creations of the human mind", Mr. Maheu concluded by emphasizing that "Unesco, on whose initiative the Universal Copyright Convention was prepared, and which claims extensive competence and far-reaching responsibilities with regard to the protection of intellectual creation, expects that your efforts will make a decisive contribution to the achievement of one of its essential aims, namely the promotion of the right to culture through the organization of international co-operation".

11. The first act of the opening session was to elect the President of the Plenary Assembly. On the proposal of Ambassador Pio Archi, head of the delegation of Italy, supported by the delegations of Canada, Tunisia, Belgium, the Federal Republic of Germany, Spain, Japan, the United States of America, and the Netherlands, Ambassador Pierre Charpentier, head of the French delegation, was elected President of the Conference by acclamation.

12. In accepting his office, Ambassador Charpentier warmly thanked the Conference for the honour accorded to him and to his country. He then spoke feelingly of the arduous work that lay behind the Conference and of the lessons to be learned from it. The President stressed that, in general, the agreement already achieved on matters of substance represented the limits of possible concessions. In expressing his confidence in the success of the Conference, he reminded the delegates of the one essential condition for that success: that this convention, like any other, must not only be adopted and signed, but must also be widely ratified and implemented.

CREDENTIALS COMMITTEE

13. The Conference then proceeded to elect a Credentials Committee consisting of delegates from seven countries: Argentina, Belgium, Hungary, Japan, Kenya, Lebanon and the United States of America. The Credentials Committee elected as its Chairman Ambassador José M. G. Alvarez de Toledo, head of the delegation of Argentina, and the Committee submitted its first report on 5 July (UCC/8). As shown in the Committee's reports (UCC/8, UCC/35 and UCC/43), 24 countries presented credentials empowering them to sign the revised convention.

RULES OF PROCEDURE

14. The Draft Rules of Procedure approved by the Intergovernmental Copyright Committee (UCC/2), were adopted without extensive discussion or amendment (UCC/2 Rev.). It was agreed, under paragraph 2 of Rule 4, that any delegation seated provisionally should be required to present its credentials in proper form "before the last plenary session". Under Rule 8, the Conference decided not to bind itself to a requirement that the President and the General Rapporteur of the Conference also serve in these capacities in the Main Commission. As revised, the Rules of Procedure established a Bureau consisting of the President, the nine Vice-Presidents, the General Rapporteur of the Conference, the Chairman and Vice-Chairmen of the Main Commission, the Chairman of the Credentials Committee, and the Chairman of the Drafting Committee. The size of the latter committee was initially set at eight elected members and was later enlarged to nine, with the Chairman of the Main Commission and the General Rapporteur also serving in an *ex-officio* capacity.

OFFICERS, COMMITTEES, AND ADOPTION OF AGENDA

15. Upon the proposal of the President of the Conference, nine Vice-Presidents representing the following delegations were elected unanimously: Canada, Czechoslovakia, Denmark, Guatamala, Italy, Japan, Kenya, Mexico and Spain. In my capacity as Co-Chairman of the delegation of the United States of America, I was honoured to be proposed and elected as General Rapporteur.

16. Although the Provisional Agenda (UCC/1) had not envisioned the appointment of a Drafting Committee until the work of the Main Commission was completed, it was agreed that immediate appointment of the Committee would facilitate the Conference's work. Upon the proposal of the President, the Drafting Committee consisted of the delegates of Argentina, Canada, France, India, Kenya, Japan, the Netherlands, Spain and the United Kingdom, in addition to the *ex-officio* membership of the President of the Main Commission and the General Rapporteur.

17. It was later proposed that, because of the complex and extremely close interrelationship between the respective tasks of the UCC and Berne Drafting Committees, those members (including members *ex-officio*) of the Berne Drafting Committee that were not also members of the UCC Drafting Committee be invited to participate as observers in the latter's work on matters of mutual concern. Although there was some sympathy with the Spanish delegate's view that as a rule drafting committees should be small—that indeed the best drafting committee consists of three members of whom one is sick and another is late—there was much support for this proposal and it was accepted without dissent. The UCC Drafting Committee elected as its Chairman Mr. William Wallace, delegate of the United Kingdom, and, as its Vice-Chairman, Mr. W. L. Haardt, head of the delegation of the Netherlands.

18. With the change already noted, the Provisional Agenda (UCC/1), was adopted.

GENERAL OPENING DISCUSSION

19. The President offered the floor to any delegation wishing to make a general statement on the work of the Conference, and no less than twenty accepted his invitation in this order: the United Kingdom, Italy, Belgium, Mexico, the Federal Republic of Germany, the United States of America, France, Cuba, Hungary, Israel, Canada, Japan, Spain, Argentina, Senegal, Uruguay, Switzerland, Kenya, Finland, and Czechoslovakia. As noted by the President at the end of the interventions, the general sentiment in favour of the programme of the Conference was overwhelming. Delegate after delegate praised the long preparatory work that had gone into the IGCC text as thorough, legally sound, and realistic. In many cases the speaker recalled the participation of representatives of his own government in that work. There were constant references to the IGCC text as a fair and reasonable balance, but one that was extremely delicate if not precarious. A recurring theme was the importance of maintaining that balance, and of improving the text on technical matters without introducing excessive or fundamentally different amendments that could upset the entire basis for the carefully co-ordinated compromise between the needs of developing countries and the interests of authors.

20. These points were reiterated so often that the delegate of Spain was prompted to refer to their boring, though welcome, unanimity, and he voiced the hope that the Conference would thus prove to be an orchestra rather than a group of soloists. The delegate of the United Kingdom stressed a point, made earlier by the President of the Conference, that for some countries the compromise embodied in the IGCC text represented almost the extreme limit of the acceptable. Other delegates, including those of Czechoslovakia and Uruguay, indicated that, while favouring the general spirit of the project, they felt themselves free to offer or support clarifying amendments. The delegate of Argentina noted the importance of the efforts being made, but felt that the proposed procedures should be improved to assure that the exceptions as well as the licences lead to the desired educational benefits, and that they do not produce unjustified results or promote special interests that need no protection. The Argentine delegate had therefore proposed some amendments aimed at guaranteeing the proper use of the proposed concessions: to provide an exceptional remedy to situations involving abuse or injustice, and at the same time to assure to authors the effective protection of their fundamental rights.

21. The delegate of Cuba reaffirmed the unshakeable decision of his government to make culture a fundamental patrimonial right and a part of the general wealth of everyone, by recognizing the pre-eminent social function of intellectual workers, to whom the State must assure both material well-being and freedom in order for them to accomplish their mission. However, he felt that the entire legal structure of copyright, as expressed in the International Convention, was based on a system encouraging the exploitation of intellectual workers for the benefit of capitalistic or monopolistic enterprises. Thus, his government favours the freest possible access to works of the mind without any economic or geographic barriers; and, since it is based upon unacceptable legal norms, the present project for UCC revision was, in his opinion, merely a palliative.

22. The delegate of Canada emphasized the great interest of his government in the problems of international copyright and the work of the Conference. This special interest arises from a combination of factors, including the existence within Canada of dual languages and cultures, and the problems of reconciling copyright protection and technological innovations in a country of immense size. To some extent, he suggested, "we are all developing countries". Canada in particular feels itself to be both developed and developing, and is thus in a unique position to understand the needs on both sides.

23. Speaking as a representative of a country too newly independent to have been represented at the Geneva Conference in 1952, the observer of Senegal stressed the need to make the Universal Copyright, Convention truly universal. He urged that, where cultural and economic interests come into conflict, it is only just and right that the latter should yield.

24. The Hungarian delegate recognized the need for a realistic solution, and approved without reservation the present efforts to revise the UCC. At the same time, he felt that the present educational and cultural problems of the developing countries are the result of their former status as colonial dependencies, and that every effort must be made to give their citizens rapid access to works while ensuring the fair remuneration of the authors whose works are used. He announced that the authors of Hungary are prepared to contribute freely to the translation of their works into the national language of any developing country, and that the competent Hungarian authorities are prepared to indemnify the authors of all works used for these purposes.

25. The delegate of the Federal Republic of Germany welcomed not only the just balance achieved in the IGCC text between the needs of developing countries, and of authors, but also the improvement in the general level of protection in the text. He stressed the importance of correlation between the revisions of the Universal and Berne Conventions, a point also emphasized by the delegate of Japan.

26. The Japanese delegate regretted that many Asian countries have never become party to either Convention, and expressed the hope that a successful co-ordinated revision of the two Conventions would lead to more ratifications and to the forging of new cultural links between developed and developing countries.

27. The President of the Conference, in summarizing the general discussion, expressed gratification at the obvious spirit of harmonious accord. He urged those governments contemplating the proposal of amendments on matters of substance to consider them in the light of the general agreement that a realistic and workable compromise had already been reached, and warned that any effort to make fundamental changes could endanger the success of the Conference.

MAIN COMMISSION AND WORKING PARTIES

28. The President of the Conference next called upon the delegates to elect a chairman and two vice-chairmen of the Main Commission. Under Rule 8 of the Rules of Procedure, the Main Commission was, in effect, a "committee of the whole", charged with the responsibility for making "a detailed study of the proposals for revision of the Uni-

versal Copyright Convention and the instruments annexed thereto", and for preparing "draft texts for submission to the Conference at a plenary meeting".

29. Upon the nomination of the delegation of the United States of America, supported by the delegations of Belgium, France, the Federal Republic of Germany, India, Italy, Japan, Kenya, Morocco and Spain, the Conference unanimously elected Mr. Rafik Saïd, the head of the Tunisian delegation as its Chairman, and the heads of the delegations of Brazil and the United Kingdom as Vice-Chairmen.

30. Upon taking the chair Mr. Saïd thanked the Conference for its confidence and for the honour done to his country and to him. He recalled that the proposals before the Committee were the result of the efforts of outstanding copyright experts over the course of twelve preparatory meetings, and that a balance had been achieved through good will and hard work. Referring to the affirmative tone of the general opening statements, he felt that there was considerable reason for optimism.

31. During the course of its work, and in accordance with Rule 6 of the Rules of Procedure, the Main Commission established three working parties. The first, which was formed primarily to deal with amendments to the translation licence provisions (Article V*ter*) proposed by the delegation of India (UCC/14), but was expanded to include other questions under Articles V*ter* and V*quater*, was chaired by the Chairman of the Main Commission and consisted of the delegates of Brazil, France, Italy, Kenya, Mexico, Sweden, the United Kingdom and the United States of America. The second, which also involved Article V*ter*, was prompted by a proposal of the delegation of Brazil (UCC/20) concerning the scope of the export prohibition. This group consisted of Brazil, France, the Federal Republic of Germany, Israel, Kenya, the United Kingdom and the United States of America, and was chaired by Professor Ulmer of the delegation of the Federal Republic of Germany. The third working party dealt with the proposal of the delegation of Kenya (UCC/13) to permit the issuance of a translation licence for broadcasting purposes under certain circumstances. The Chairman of this group was Mr. da Costa of the delegation of Brazil, and included representatives of the following delegations: Brazil, France, Israel, Kenya, Mexico, Switzerland, the United Kindgom, and the United States of America. The results of these working parties will be discussed under the appropriate headings in connexion with Article V*ter*.

32. On 15 July 1971, during the meeting of the Berne Main Commission, a proposal (B/DC/25) was tabled by four African States members of the Berne Union (the Democratic Republic of the Congo, the People's Republic of the Congo, Ivory Coast and Niger). Although Senegal was not listed as one of the sponsors of the proposal, it was identified as such during the discussions. This proposal in general concerned the possibility for developing countries having a common language to obtain a joint licence for translation or reproduction. Because of the need for consistency between the two revised conventions, a Joint Working Party of both Main Commissions to consider this proposal was established under the Chairmanship of Professor Ulmer, Chairman of the Berne Main Commission and delegate of the Federal Republic of Germany. The Joint Working Party consisted of

representatives of the following States: Argentina, France, India, Ivory Coast, Kenya, the United Kingdom and the United States of America. The Chairman of the Main Commission of the UCC also participated as an *ex-officio* member. The results of its work as regards the Universal Copyright Convention will be reported below immediately following the discussions of Articles V*ter* and V*quater*.

THE TITLE AND PREAMBLE

33. The Conference agreed to adopt the suggestion of the Chairman of the Main Commission that the text to be signed be given the following title: "Universal Copyright Convention as revised at Paris on 24 July 1971". This formula was preferred to one that would refer to the revised convention as the "Paris Act", and to a longer formulation such as "Universal Copyright Convention of 6 September 1952, revised at Paris on 24 July 1971". The Conference's decision permitted dropping the word "revised" as it appeared in a number of articles of the IGCC text, and it was agreed that this deletion should be made throughout. It was understood that, whenever the phrase "this Convention" appears in the Paris text, it refers to the 1971 revision and, wherever it is necessary to differentiate between the two texts, the provision would refer to "the 1952 Convention" and to "this Convention".

34. As to the Preamble, the IGCC text had suggested no changes. However, to take account of the nature of its action in 1971, the Conference agreed to add a paragraph at the end of the Preamble stating explicitly that the Contracting States "have resolved to revise the Universal Copyright Convention as signed at Geneva on 6 September 1952 (hereinafter called 'the 1952 Convention')....".

35. It was also agreed that the phrase "Contracting State", which is used in the Preamble and throughout the body of the text in both the singular and plural, refers to a State Party to the 1971 Convention.

36. The discussions on these points, and the problems of relationships between those States that ratify or accede to the 1971 Convention and those States that are party to the 1952 Convention only, raised the question of whether we are here dealing with one Convention or two. It will be discussed later in this report in connexion with Articles IX and XI.

ARTICLES I–IV

37. Articles I and III were left exactly as they stand in the 1952 text. Article II, which establishes the basic principle of national treatment for both published and unpublished works, had been amended in the IGCC text to include an additional reference to "the protection specially granted by this Convention". The Conference adopted this amendment in both paragraphs (1) and (2) of Article II.

38. In connexion with Article II (3), the observer of Senegal inquired concerning the status of domiciled refugees. It was agreed to defer this question until the discussion of the Protocols attached to the 1952 Convention, including Protocol 1 dealing with the assimilation of refugees and stateless persons. The point will also be discussed in this report in connexion with the Protocols.

39. In connexion with both Article IV and Article V, it was pointed out that the lack of any system of lettering or numbering the subordinate paragraphs has made referencing difficult. The Conference therefore agreed to make the minor amendments in the 1952 text necessary to remedy this defect.

ARTICLE IV*bis*

40. The first entirely new article to be discussed by the Main Commission, and one of the most important, was Article IV*bis*. In accordance with the Washington Recommendation, the basic purpose of the provision is to include in the Universal Copyright Convention an explicit requirement for the protection of "the basic rights constituting the author's economic right", including three rights mentioned by name: reproduction, broadcasting, and public performance.

41. As adopted by the Conference, Article IV*bis* is intended to give further body and meaning to the obligation, contained in Article I of the Convention, that "each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors . . .". Paragraph (1) of the new article defines these rights as including "the basic rights ensuring the author's economic interests", and these "basic rights" are further defined to include three exclusive rights of the author: the exclusive right to authorize "reproduction by any means", the exclusive right to authorize "public performance", and the exclusive right to authorize "broadcasting". As proposed in the IGCC text, the rights referred to are broad enough to cover reproduction, performance and broadcasting of the work whether it is used unchanged from its original form, or whether the user reproduces, performs, or broadcasts it "in any form recognizably derived from the original".

42. Prompted by a proposal of Argentina (UCC/7), the Conference considered whether the rights enumerated in Article IV*bis* (1) should be expanded to include the "moral right" of the author: that is, "the right to claim authorship of a work and to oppose any distortion, mutilation or other change in that work, or any interference with the work that might be prejudicial to the author's honour or good name". A number of delegations expressed themselves as favouring the principle that the moral right is one of the most fundamental of the author's rights. On the other hand, the point was made by several delegations, notably that of Italy, that the proposal would mark a radical departure from the 1952 Universal Convention, and that some States now party to the UCC including the United States of America, Kenya, and others, do not recognize this right under their statutory law. Reference was made to the specific goal of the Washington Recommendation, which was the express recognition of certain "economic" rights or interests of the author but was clearly not intended to extend to the author's moral rights. Fears were expressed that a requirement for recognition of moral rights would be fatal to the entire programme for revising both the Universal and the Berne Conventions.

43. In the final text, the word "economic" was retained, but in the enumeration of specific rights the word "exclusive" was added. Although it was the hope of many delegations that, under this wording, Contracting States would be moved to grant moral as well as pecuniary

rights, it was the understanding of the Conference that no State would be obliged, under the 1971 Convention, to grant protection for the moral rights of the author. It was also understood that the words "include" and "including" an Article IV*bis* (1) were not to be interpreted as limitative or exhaustive.

44. A fundamental point of interpretation of the 1971 Convention was referred to several times during the Conference, in connexion with Article IV*bis* and in several other contexts. The Conference agreed the general aim of the 1971 Convention should be that no State that is now party to the Universal Copyright Convention of 1952, and that now respects the fundamental rights of authors, should be required to make any changes in its domestic law as a condition to adhering to the 1971 Convention. Under the new Convention, developing countries would, of course, have an opportunity to introduce compulsory licensing systems in accordance with Articles V*ter* and V*quater*, but it was understood that no country now meeting the obligations of the 1952 Convention and according basic copyright protection would be required to assume new obligations in order to adhere to the 1971 Convention.

45. This point assumed even greater significance during the consideration of a second proposal of the delegation of the Argentine Republic (UCC/7) for amendment of Article IV*bis*. Paragraph (2) of the IGCC text of that article provided that, despite the specification of exclusive rights in paragraph (1), a Contracting State could make exceptions to these rights as long as they "do not conflict with the spirit and provisions" of the 1971 Convention, and provided the State accords "a reasonable degree of effective protection to each of the rights to which exception has been made". The proposal of Argentina would have limited the right of a State to make exceptions to cases where "the work is to be used in educational establishments for teaching purposes and reaches the recipients free of charge" with the added limitation that, in cases of broadcasting, the stations receive no profit. This was considered too limitative by the Conference, which preferred a more flexible formula, one that was consistent with the spirit of the 1952 Convention and capable of accommodating a great variety of legal systems, economic and social situations, and cultural factors. A proposal included in the comments of the Swiss Government (UCC/5, Annex, p. 11), was also considered, but was not accepted on the ground that it might be interpreted as allowing general compulsory licensing systems for all types of works. The delegation of the Federal Republic of Germany referred to the wording for this provision put forward as Alternative B in the text prepared by the Ad Hoc Preparatory Committee (UCC/4, p. 15), but declared that it regarded the IGCC text as acceptable, if the limits to the exceptions are clearly indicated in this report.

46. The Conference agreed that, subject to very minor drafting changes, the IGCC text should be accepted and that various points raised by its wording should be interptreted as follows:

1. *The exceptions must not "conflict with the spirit" of the 1971 Convention.* It was considered that, in addition to the requirement for "adequate and effective protection" in Article I, the "spirit of the Convention also comprehended the convictions expressed in paragraphs 1 and 2 of the Universal Declaration of Human

Rights: that everyone has a right "freely to participate in the cultural life of the community", and that everyone equally has a right "to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author".

2. The "a contrario principle". Paragraph 83 of the Intergovernmental Copyright Committee Report accompanying the IGCC text (UCC/4, Annex IX, p. 9) stated the view of the Committee that "the inclusion in the Convention of special provisions allowing developing countries to publish certain works and translations under compulsory licences, means *a contrario* that, except as provided in Article V, there could be no question of developed countries instituting a general system of compulsory licensing for the publication of literary, scientific or artistic works". The Conference adopted this principle, it being understood that a "general system" referred either to a system applying to a specific type of work with respect to all forms of uses, or to a system applying to all types of works with respect to a particular form of use.

3. The exceptions must not "conflict with the provisions" of the 1971 Convention. As a corollary to the "*a contrario*" principle, the Conference understood the reference to "the provisions" of the revised convention as referring to Articles V*ter* and V*quater*. This means that a State not qualifying as a developing country under Article V*bis* would not be entitled to institute licensing systems similar to those provided in Articles V*ter* and V*quater*.

4. The State must accord "a reasonable degree of effective protection" to each of the rights named. It was understood that, under the second sentence of paragraph 2 of Article IV*bis*, no State would be entitled to withhold entirely all rights with respect to reproduction, public performance, or broadcasting, that where exceptions are made they must have a logical basis and must not be applied arbitrarily, and that the protection offered must be effectively enforced by the laws of the Contracting State.

ARTICLE V

47. Article V of the 1952 Convention, dealing with translation rights, proved to be one of the most difficult problems faced by the 1952 Geneva Conference, and the provision as it now exists in the Universal Copyright Convention in itself represents a delicately balanced compromise. In all of the preparatory meetings leading to the IGCC it was agreed not to tamper with the existing text, and to use it intact as an underpinning for the special translation provisions applicable to developing countries in Article V*ter*.

48. When it first considered the question, the UCC Main Commission adhered to this principle, and only very minor consequential drafting changes were suggested. To conform paragraph (1), the basic clause of Article V establishing the author's exclusive right of translation, to the new Article IV*bis* establishing his other basic rights, the opening phrase was changed from "Copyright shall include the exclusive right to . . ." to "The rights referred to in Article I shall include the exclusive right of the author to . . .".

49. Following meetings of the Berne Convention Main Commission, however, it became increasingly apparent that there was a need for uniform terminology throughout both Conventions when identifying a language with a country for various purposes. The formula finally accepted, "a language in general use" in the State will be discussed in detail in connexion with Article V*ter*. The Conference agreed to conform the present language of Article V, which refers to the "national language or languages" of the State, to this new formula, and made minor drafting changes in four places in Article V to accomplish this limited result. It was understood that there was no intention on the part of the Paris Conference to change the interpretation of the phrase as it exists in the 1952 text, and that the only purpose of the change was consistency of terminology.

50. In the third week of the Conference the discussions of the various procedures required for obtaining translation and reproduction licences, during the meetings of the Berne and Universal Convention Main Commissions as well as the plenary sessions of the UCC, were among the thorniest and most time-consuming that the delegates had to endure. Article V of the 1952 Convention had established a procedure with respect to translation licences granted under it; the IGCC draft had imported this procedure intact into Article V*ter*, but had diverged from it in connexion with Article V*quater*, and there were further divergences in the draft adopted by the Berne Main Commission. Concern was expressed among delegates from developing countries as to how all these variations could be reconciled and implemented in domestic legislation and practice. A proposal to achieve some degree of uniformity by amending Article V, as well as Articles V*ter* and V*quater*, was put forward by the delegation of the United Kingdom (UCC/39), but was withdrawn in the face of a general reluctance to make further changes in Article V. The delegation of the United Kingdom then submitted a proposal (UCC/41) to achieve some uniformity through an amendment of Article V*ter* alone; this proposal, which was adopted with some changes in detail, will be discussed in connexion with Article V*ter*.

51. The delegate of India, noting that the phrase "due provision shall be made by domestic legislation" in paragraph (d) of Article V(2) had been changed in equivalent provisions of Article V*ter* and in the draft text of the revised Berne Convention suggested that the words "at the national level" be substituted for the words "by domestic legislation". Again, the reluctance to make material changes in Article V prevailed and the proposal was withdrawn, but amendments were made in Articles V*ter* and V*quater* to accomplish the result with respect to licences issued under those provisions.

52. Under the language of Article V, a compulsory translation licence may be granted under certain conditions to "any national" of a Contracting State. The delegate of India asked that it be made clear that the term "national" includes legal entities, government bodies, corporate bodies, and other artificial persons. There was no dissent from this interpretation at the Paris Conference, but it was agreed that there was no need to define the term explicitly in the text. The point is discussed in a different context under Article II of the Report of the Rapporteur-General of the 1952 Geneva Conference, where the following interpretation appears: "The President suggested

that it was a matter for each Contracting State to interpret the word 'nationals' according to its own rule of law; the Convention was not to be regarded as imposing on any Contracting State the obligation of recognizing for copyright purposes legal and moral persons as well as physical persons, but only requiring that a State should apply the same interpretation to foreign nationals as to its own nationals; for example, a State protecting the works of its own incorporated bodies should protect also the works of such bodies of other Contracting States".

ARTICLE V*bis*

53. One of the fundamental ideas behind the Washington Recommendation was to have parallel and concurrent revisions of the Universal and Berne Conventions to make limited compulsory licensing systems available for the benefit of developing countries with respect to translations and reproductions. Article V*bis* is the first of the three new articles in the revised UC intended to accomplish this goal; its counterpart in the Berne revision is Article I of the Appendix to the Paris Act of the Berne Convention. The purpose of this article is to establish the criteria a State must meet, and the procedural machinery it must observe to take advantage of the special translation and reproduction provisions in the two articles that follow it. Article V*bis* is the first and probably the most significant, though not the only, provision in the revised text that raises that most perplexing of problems: What is a "developing country"? The term appears expressly in paragraphs (1) and (3) and by reference in paragraph (5) of Article V*bis*. Under paragraph (1), any Contracting State "regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations" is entitled, at the time it becomes a party to the Universal Copyright Convention or at any later time, to notify the Director-General of Unesco that it will apply some or all of the provisions of Articles V*ter* and V*quater*. Under paragraph (2), this notification is effective during the first ten years after the coming into force of the 1971 Convention, and the Contracting States may renew its notification at ten-year intervals thereafter. Paragraph (3) provides that, when the State ceases to be regarded as a "developing country", it is precluded from making the decennial notification and, following a grace period, from applying the exceptions. The formula contained in paragraph (1) emerged from the report adopted on 27 June 1969 by a sub-committee established by the UCC Intergovernmental Copyright Committee (IGC/SC/6). Although its context was changed considerably by the Washington Recommendation and later events, the formula itself has been accepted without much discussion and has remained basically intact. The operative phrase adopted was the one evolved at Stockholm: ". . . regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations . . .". Another clause, similar to one adopted at Stockholm and retained in the Berne revision at Paris—"and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, . . ."—was not adopted in the 1971 Universal Convention because of the general feeling that it added nothing to the basic criterion.

54. The IGCC text of paragraph (2) of Article V*bis* had provided that a developing country could renew a notification made under paragraph (1) "during the year preceding the expiration of the relevant ten-year period". The Conference accepted an amendment offered by the delegation of Japan (UCC/9) to change the renewal period from the year immediately preceding the expiration date to a one-year period "not more than fifteen or less than three months" before expiration. The purpose was to require notification sufficiently in advance of expiration to allow other Contracting States to know know definitely whether the ten-year period would expire on a given date or not.

55. In connexion with paragraph (3), the same Japanese proposal (UCC/9) raised a question as to whether the variable grace period allowed after a State has ceased to be developing was not too long and indefinite. Under the IGCC text, to take an extreme example, a State could renew a notification in 1975, cease to be developing in 1976, and yet enjoy the benefits of Articles V*ter* and V*quater* until 1985. The Conference agreed to retain the IGCC formula, with some clarifying amendments, on the ground that the transition within a country from a developing to a developed stage would be gradual, and that the provision should be flexible enough to allow for gradual adjustments.

56. Paragraph (4) allows for the disposition of copies already made under the exceptions of Articles V*ter* and V*quater* even after those exceptions have ceased to be applicable. This provoked a discussion as to whether some time-limit should be imposed on this privilege. The Conference rejected the proposal for a definite time-limit, but amended the text to allow distribution only "until their stock is exhausted".

57. The intention of paragraph (5) of Article V*bis* is to make clear that, where a Contracting State has made a declaration under Article XIII with respect to a dependent country or territory, it could also make a notification under Article V*bis* on behalf of that country or territory. In line with a proposal by the delegation of Argentina (UCC/7), the text was amended to provide explicitly that the export provisions of Articles V*ter* and V*quater* are fully applicable as between the Contracting State and its dependency in this situation.

THE QUESTION OF MATERIAL RECIPROCITY

58. During the discussion of Article V*bis* the delegation of Sweden raised a question (UCC/12) as to whether, because the proposed text of the revised Berne Convention contains a provision prohibiting the application of material reciprocity against States availing themselves of the special translation and reproduction licences, the revised text of the UCC should not contain a similar provision. There was no disagreement whatever upon the substance of this matter: the Conference unanimously agreed that material reciprocity could not be applied in this situation. It was also agreed early in the discussion that, if the UCC text was to contain such a provision, it should not appear in Article V*bis* but in a general clause later in the Convention text. The question resolved itself into whether the declaration against material reciprocity should go into the text of the Convention or be contained in this General Report.

59. The UCC Main Commission was divided on this question, which was the subject of two special meetings of the Drafting Committee. This Committee produced the draft text of a new article (UCC/24 Rev.) and the draft of a section of this General Report (UCC/28), which had been submitted to the Drafting Committee by the delegation of France (UCC/CR: 1). The Main Commission voted not to include the proposed text of a new Article VII*bis* in the Convention, with 17 delegations voting against inclusion, ten voting for, and two abstaining from the vote. Thereupon it was decided, without dissent, to include the Drafting Committee's proposed language (UCC/28) in this report, and I am, therefore, indebted to that Committee, and the delegation of France, for the following five paragraphs:

The Conference considered whether the text of the revised convention should or should not include an express provision prohibiting all material reciprocity in respect of a State availing itself of the exceptions mentioned in this Convention—whether these were the special exceptions provided for in Articles V*ter* and V*quater* in favour of developing countries, or the exceptions of a general nature provided for in Article IV*bis*.

There was general agreement on the following:

(1) With regard to material reciprocity, no discrimination should be made between the exceptions in Articles V*ter* and V*quater* and those in Article IV*bis*.

(2) The fact of a State's availing itself of any exception should in no case permit other Contracting States to reduce the level of protection granted by them to works originating in the State in question.

(3) The principle of the absence of material reciprocity already exists in the 1952 Convention. It derives from the principle of the assimilation of foreign authors and works to national authors and works.

The fact that such reciprocity is permitted on only one, precisely specified point, viz, the duration of protection, underlines the fact that this constitutes the sole exception to a general principle and that where the text is silent; it can only be interpreted in the light of the principle of non-reciprocity.

It therefore appeared that the inclusion of a special article specifying that the fact of a State's availing itself of exceptions would not permit any retaliation under the principle of material reciprocity, could be interpreted as a reversal of the presumption of absence of material reciprocity which governed the 1952 Convention and that consequently, States remaining party to the 1952 Convention alone, would in future be able to interpret that Convention as being governed by the principle of material reciprocity.

To avoid any such interpretation and taking note of a general agreement excluding all possibility of retaliation based on the idea of material reciprocity, the Conference was of the opinion that the inclusion of an article expressly excluding material reciprocity could serve no useful purpose and would only weaken a principle which was generally accepted and which should continue to govern both the present Convention and the Convention of 1952.

ARTICLE V*ter*

60. As at Geneva twenty years before, the question of translation rights was the most difficult and time-consuming problem the Paris Conference had to face. In the intervening twenty years the nature and complexity of the problem had undergone some fundamental changes, resulting primarily from the emergence of newly-independent nations with immense demands for educational development. These changes are reflected in the differences between Article V, the 1952 provision obligating Contracting States to grant exclusive translation rights but allowing them to grant compulsory licenses after seven years under certain conditions, and Article V*ter*, imposing the same obligations on Contracting States that are developing countries, but allowing compulsory licensing after periods of only one or three years, though under considerably stricter conditions.

61. The basic formula of Article V*ter* is stated in its opening paragraph: If a Contracting State is a "developing country", under the meaning and conditions of Article V*bis*, it may reduce the seven-year period of absolutely exclusive translation rights to three years; and "in the case of a translation into a language not in general use in one or more developed countries" that are party to either text of the UCC, the period can be further reduced to one year.

62. The delegation of India put forward a proposal (UCC/14) to cut the one-year period in half, on the ground that, since only non-exclusive licences into local languages were involved, six months of exclusivity would be long enough to protect the copyright owner's interests. This proposal met with strong opposition from delegations representing developed countries, not only because it disturbed the balance of what was constantly if inelegantly referred to as the "package deal", but also because, as a practical matter, six months was not long enough to allow the author to secure a translator of his own choice and to arrange for preparation and publication of the authorized translation. Following the meeting of a working party on the question, the delegation of India provisionally withdrew its proposal on condition that the Conference accept in principle the proposals of the delegation of Kenya (UCC/13), which now figure in paragraphs (1) and (9) of Article V*ter*.

63. The key to the dividing line between the three-year and one-year periods provided by paragraph (1)(a) of Article V*ter* is whether the translation is "into a language not in general use in one or more developed countries . . .". The meaning of the phrase "in general use" was discussed at several points during the Conference and, as in the case of the meaning of "developing countries", it was apparent that although no rigid definition was possible, no better term could be found. As a starting point, it was suggested without dissent that any language officially identified as one of the national languages of a country would be considered "in general use". The principal problem arises where, although not identified as a national language, a particular language is spoken or read by a significant percentage of the total population of a country, including the populations of regions of a country and of outlying territories. Although a reasonable dividing line for guidance on this question might be the use of a language by ten per cent or more of the total population of a country, it was considered that no percentage figure could be applied arbitrarily, and would

necessarily vary in accordance with a wide range of demographic factors including regional and ethnic groupings within a country and other social and political circumstances. In any case, it was clearly understood that for all purposes the three so-called "world languages" (French, English and Spanish) would be considered "in general use in one or more developed countries".

64. It was understood that "developed countries" in this context referred to countries not regarded as "developing countries in conformity with the established practice of the General Assembly of the United Nations". However, the Conference did not accept a Japanese proposal (UCC/9) to amend the text of Article V*ter* along these lines, on the ground that in borderline cases it might introduce uncertainties.

65. On the other hand, the delegation of Kenya put forward a proposal (UCC/13) which, in effect, defined "developed countries" more limitatively for this purpose and provided a flexible formula to cover certain special situations. Although the Japanese delegation pointed out that it would be unreasonable to make a distinction between languages in general use in developed countries that are UCC Contracting States and languages in general use in developed countries that are not, it was agreed to amend the article in accordance with the Kenyan proposal. Under the text adopted by the Conference, the one-year period would be applicable under Article V*ter* (1)(a) if the translation is into a language not in general use in any developed country that is party to either the 1952 or the 1971 texts of the Universal Copyright Convention. Correspondingly, a new sub-paragraph (b) was added under which it would be possible to alter the effect of sub-paragraph (a) if unanimous agreement could be obtained from all of the developed UCC countries in which a particular language, other than English, French, and Spanish, is in general use.

66. In other words, a developing country can make a translation under paragraph (1)(b) of Article V*ter* within one year rather than three under the following conditions: (1) if the translation is not into one of the three "world languages"; (2) if it is into a language in general use in one or more developed countries party to either the 1952 or the 1971 texts of the Universal Copyright Convention; (3) if these countries unanimously agree among themselves that another period of one year (or more) may be substituted; and (4) if the Director-General of Unesco is notified of the written agreement. It was clearly understood that any such agreement would require formal action at the executive level by each and every one of the developed countries concerned, and that it could stipulate conditions such as, for example, that it applied only to certain types of works such as technical and scientific works. It was also stipulated that in no case could the exclusive right of translation into English, French or Spanish be reduced below the three-year minimum provided in Article V*ter* (1)(a). There were some misgivings, especially upon the part of the Italian delegation, about the effect of private arrangements, such as those allowed in paragraphs (1)(b) and (4)(c) of Article V*ter*, upon the other States party to a multilateral convention. However, the Conference agreed that, in exceptional cases where a degree of flexibility was needed, these separate arrangements could be justified.

67. During its first discussion of Article V*ter*, the Main Commission considered an amendment offered by the delegation of Sweden (UCC/16) intended to bring the procedure to be followed "if the

owner of the right of translation cannot be found" into line with the provisions of Article V*quater* on reproductions. These differ in some of their details from the procedure outlined in Article V, which was incorporated by reference in Article V*ter* of the IGCC text. Although the Main Commission was, on first consideration, divided on the question and the Swedish delegation withdrew its proposal, the question was reopened and the Swedish proposal was, in substance, eventually adopted.

68. As noted above in connexion with the discussion of Article V, strenuous efforts were made toward the end of the Conference to conform, as much as possible, the various procedures required for the granting of compulsory licences under Articles V*ter* and V*quater* of the 1971 Universal Convention and under Article IV of the Appendix to the 1971 Paris Act of Berne Convention. Having decided not to change the procedure already established in Article V of the UCC, the Conference agreed to accept a somewhat different procedure with respect to translation licences granted under Article V*ter*, on the basis of a proposal of the delegation of the United Kingdom (UCC/41).

69. The United Kingdom proposal, with certain amendments, was added as sub-paragraphs (c) and (d) of paragraph (1) of Article V*ter*, and establishes essentially the same procedure for the granting of translation licences under Article V*ter* as that established for the granting of reproduction licences under Article V*quater*. This procedure will be discussed further in connexion with the latter Article. The only essential difference between the procedures for translation and reproduction licenses set forth in Articles V*ter* and V*quater*, and those prescribed in Article IV of the Appendix to the new Berne test, involve the specific mention in the former of "The International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization".

70. Paragraph (2) of the final 1971 text of Article V*ter*, which had been paragraph (5) of the IGCC text, provides for grace periods following the filing of a request for permission to translate under paragraph (1)(c), or the dispatch of the copies of an application for the granting of a compulsory translation licence under paragraph (1)(d). The rather complicated formula in Article V*ter* can be summarized as follows:

(1) Where the applicable period under Article V*ter* is three years, no compulsory licence may be granted until a "further period of six months has elapsed" from the date of the request or of the dispatch of the copies of the application; and

(2) Where the applicable period under Article V*ter* is one year, no compulsory licence may be granted until "a further period of nine months has elapsed".

71. The Conference adopted an amendment proposed by the delegation of Sweden (UCC/16) making clear that publication "by the owner of the translation or with his authorization" during the six- or nine-month period would preclude the granting of a compulsory licence. It was agreed, as a matter of interpretation, that under this provision:

(1) The formal requests or applications that start the six- or nine-month grace periods running should clearly refer to the grant of a licence under Article V*ter*;

(2) If the copyright owner has filed a list of the works for which he holds translation rights with the competent authority in the developing country, it cannot be argued under Article V(2)(c) that "the owner of the right of translation cannot be found";

(3) In cases where the one-year period would have been applicable but the request or application is not filed until after three years, the grace period would be six months rather than nine months.

72. The Main Commission considered the question whether the three-year/six-month and the one-year/nine-month periods were concurrent or consecutive. The delegation of India held the view that the three-year/six-month and the one-year/nine-month periods could, in each case, run concurrently or overlap each other. It was, however, the prevailing view in the Commission that the periods were intended to be consecutive. Under this interpretation, the use of the word "further" implied that it was necessary for the basic period to have run its course before the grace periods under V*ter* (2) could start, and that the absence of the word "further" in the equivalent provision in Article V*quater* implied that, in the cases of reproduction, the periods could be concurrent.

73. Paragraph (3) specifies that licenses under Article V*ter* can be granted only for the purpose of "teaching, scholarship or research". It was the understanding of the Conference that the word "scholarship" in this phrase refers not only to instructional activities at all levels in tutorial institutions, primary and secondary schools, colleges, and universities, but also to a wide range of organized educational activities intended for participation at any age level and devoted to the study of any subject. The Conference also agreed that the word "research" cannot be interpreted to permit the translation, under Article V*ter*, of copyrighted works by industrial research institutes or by private corporations doing research for commercial purposes. However, the Conference declined to accept, as too limitative, a proposal by the delegation of Argentina (UCC/7), that would have confined the effect of Article V*ter* to translations made "for the benefit of official or officially recognized establishments of education or research".

74. Paragraph (4)(a) of Article V*ter*, like its counterpart in paragraph (1)(f) of Article V*quater* dealing with reproductions, states a fundamental rule underlying both provisions: that copies produced in accordance with a compulsory licence issued under either Article V*ter* or V*quater* cannot be exported, and that the licence is "valid only for publication in the territory of the Contracting State where it has been applied for". A proposal of the delegation of Argentina (UCC/7), to make the validity of a licence dependent upon both printing and publication in the territory of the licensing State, provoked one of the major controversies of the Paris Conference. The Argentine amendment was not adopted, but, following the meeting and report of a Joint Working Party of the Main Commissions of both the UCC and the Berne Conferences, agreement was reached upon an interpretation to be included in this report. Since it deals with both Articles V*ter* and V*quater*, this interpretation will be found in a separate section following the report on Article V*quater*.

75. Under sub-paragraph (b) of Article V*ter* (4), as under the IGCC text, copies published under a licence must bear a notice making clear they are available for distribution only in the licensing State. As proposed by the delegation of the United States of America (UCC/18), the sub-paragraph was amended to require retention of the copyright notice provided in Article III (1) on any copies of a translation published under a compulsory licence.

76. A special problem, arising from the desire of certain developing countries to supply communities of their nationals living in other countries with translations prepared under V*ter*, was raised by a proposal of the delegation of Brazil (UCC/20). There was general sympathy with the aims behind the proposal, but some delegations felt that the matter did not require a textual amendment since it was acknowledged that the sending of individual copies for personal use could not be regarded as "export". Other delegations preferred to have a new provision on the subject, although it was recognized that neither the original proposal (UCC/20) nor a revision of it (UCC/20 Rev.) contained the restrictions and safeguards necessary for general acceptance.

77. When the matter was put to a vote, the Main Commission decided to include a provision on the subject in Article V*ter*, and a working group was appointed to prepare a text (UCC/26). With minor technical amendments the working group's text was accepted by the Conference, and now appears as sub-paragraph (c) of Article V*ter* (4).

78. Under this provision the ban upon exports is inapplicable to cases where a governmental or public entity of a licensing State sends copies of a translation abroad, but only: (1) if the translation is not in English, French, or Spanish; (2) if the recipients are individuals or collective groups who are nationals of the licensing State; (3) if the copies are used exclusively for purposes of teaching, scholarship, or research and are sent or distributed "without the object of commercial purpose"; and (4) if the country to which the copies are addressed has agreed to allow their receipt, distribution, or both, and the Director-General of Unesco has been notified of this agreement.

79. The phrase "without the object of commercial purpose", which was finally adopted in preference to "without the object of financial gain", was understood here, as elsewhere, to exclude private enterprises operated for profit-making purposes from engaging in the permitted activities, but not to preclude public or governmental organizations from making charges intended to recover their costs. It was also considered that, whether or not the country to which the copies are sent is a party to the UCC, it must agree to allow the copies to be received or distributed, and a notification of its agreement must be sent to the Director-General of Unesco.

80. Paragraph (5), which deals with the amount and payment of compensation under compulsory licenses, had appeared in the IGCC text, and was retained without any substantial change. A new provision in Article V*ter*, however, is paragraph (6), derived from a proposal of the delegation of Sweden (UCC/16) which in turn was based upon a corresponding provision in Article V*quater* (2)(c). In effect, it provides for the termination of a licence under Article V*ter* if an authorized translation of the work "in the same language and with substantially the same content" is published "at a price reasonably related to that normally charged in the country for comparable works".

81. Paragraph (7), maintained verbatim from the IGCC text, deals with works "composed mainly of illustrations". It allows for the translation of the text, along with the reproduction of the illustrations, only under the conditions of Article V*quater*. This provision was interpreted as applying primarily to art books, and it was agreed that the question of whether a given work was "mainly" composed of illustrations should be left to the competent authority.

82. A proposal of the delegation of Kenya (UCC/13) to add to a new Article V*quinquies*, granting a limited translation right for purposes of broadcasting, was also the subject of much discussion at the Paris Conference. The proposal, which had no counterpart in the IGCC text, and was not part of any previous "package deal", was based on the assumption that Articles V and V*ter* which deal exclusively with the publication of translations would not permit translations for broadcasting unless a special provision to this effect were added. In support of the proposal it was urged that broadcasting is coming to play a more and more important part in the educational programmes of developing countries suffering from shortages of both books and teachers, and that a translation licence for broadcasting is at least as important to these countries as a licence for purposes of publication.

83. At the outset of the discussions there were expressions of support for, or at least in sympathy with, the aims of the proposal. The delegation of Argentina, however, questioned the advisability of dealing with the proposal during the present Conference. Although it appreciated the importance of broadcasting as an educational medium in developing countries, the Argentine delegation felt that, since the question had not been considered during the preparatory meetings, it required more thorough study at the governmental level before being submitted to a revision conference. A number of questions were raised concerning the proposed text, and a working group was established to consider the question in detail. This group reached a provisional accord on general principles, and the delegations of Kenya and the United States of America were asked to formulate a new text (UCC/27). This text, with relatively minor changes by the Main Commission and the Drafting Committee, was adopted by the Conference and appears in the text as paragraph (8) of Article V*ter*.

84. Under paragraph (8)(a), a licence to translate a work that is protected under the 1971 Convention and has been published in "printed or analogous forms of reproduction", may be granted to a broadcasting organization in a developing country party to the UCC under the following conditions:

(1) The copy from which the translation is made must have been "made and acquired in accordance with the laws" of the licensing State. As stated in paragraph 34 of the Report of the General Rapporteur of the Paris Conference for Revision of the Berne Convention (B/DC/36), this language was interpreted to mean "that the copy must not be an infringing copy according to the laws of that country".

(2) The sole purpose of the translation must be for broadcasting, and the sole purpose of the broadcasts using the translation must be either "teaching" or "the dissemination of the results of specialized technical or scientific research to experts in a particular profession". The latter formulation was found

acceptable after several delegates had expressed dissatisfaction with a mere reference to "research".

(3) The translation must in fact be used solely for the types of broadcasting just mentioned, and the broadcasts must go to recipients on the territory of the licensing State. As long as the broadcasts are intended for reception on the State's territory, the license is not affected if listeners or viewers in other countries also receive them.

(4) The broadcasts may either be "live", in the sense that they are concurrent *with the sounds or* visual images involved, or they may be made "through the medium of sound or visual recordings". In the latter case, the recordings must be made lawfully and for the sole purpose mentioned in paragraph (2), above. As long as broadcasting takes place, it makes no difference whether it is radio or television and whether it involves terrestrial or satellite relays. The term "sound or visual recordings" includes all types of aural and visual fixations, including films, phonograms, and audio and video tapes in their various manifestations.

(5) If sound or visual recordings are used for the broadcasts, they can only be exchanged between broadcasting organizations whose headquarters are all in the licensing State. Under no circumstances could these recordings be sent beyond the frontiers of the country, nor could they be the subject of sales, rentals, or licensing arrangements within the country.

(6) All of the uses of the translation including the broadcasting itself and any exchange of recordings, must be "without any commercial purpose". The Conference agreed that, in the context of broadcasting, the phrase "without any commercial purpose" means that the broadcasting organization itself is not a private corporation operated for profit-making purposes and that no commercial advertising is included in the programme incorporating the translation. It was not, however, intended to preclude the organization from broadcasting commercial advertising at other times, or to exclude the common situation in which the owners of receiving sets are charged a licence fee.

85. Under sub-paragraph (b) of paragraph (8) a licence may also be granted under all of the same conditions for the translation of any text incorporated in an audio-visual fixation which was itself prepared and published for the sole purpose of being used in connexion with systematic instructional materials". Here the subject matter involved consists exclusively of published teaching materials such as, for example, instructional films and video cassettes, filmstrips, slides, and transparencies, combined with some textual element which may be part of a sound track or of an accompanying recording.

86. A point of paramount importance was emphasized several times during the discussions of paragraph (8): the licence granted under it can cover only the act of translation, and nothing more. It cannot convey any rights of adaptation, including adaptation of a non-dramatic work to dramatic form, or use in cinematographic works and it does not authorize or sanction the broadcasting of the translation or the making of "ephemeral" or other recordings. These rights rest on other provisions of the Convention and local law, and nothing in paragraph (8) is intended to impinge upon or supersede

copyright protection for these rights. The sole purpose of paragraph (8) is to authorize translation for purposes of broadcasting under certain circumstances.

87. Paragraph (9) is the provision governing the important question of the interrelationship between Articles V and V*ter*. It first provides that, where they are not superseded by the special provisions of Article V*ter*, the provisions of Article V shall be fully applicable to all translations made under compulsory licences. This incorporation by reference means several things:

(1) The work translated under a licence must be a "writing". This term has a limited meaning under Article I of the Universal Copyright Convention, although its scope is a matter of some dispute. The interpretation most commonly held is that "writings" do not include "musical, dramatic and cinematographic works, and paintings, engravings and sculpture". Under this interpretation, except for the cases of text incorporated in art books and audio-visual fixations, specially dealt with in paragraphs (7) and (8)(b) of Article V*ter*, the article applies only to non-dramatic text matter. The delegation of Kenya expressed the view, however, that dramatic texts can come within the scope of Articles V and V*ter*. The Conference expressly stipulated that the words, lyrics, or text or musical compositions were not covered by the translation privileges of Article V*ter*.

(2) As amended by the Conference, Article V limits the compulsory licence to translations into "a language in general use" in the State granting the licence.

(3) All of the various conditions and safeguards of authors' rights built into Article V are transferred intact into Article V*ter*. These include the requirements that the original title and name of the author appear on the copies of the translation published under a licence, that the licence is not transferable, that a correct translation of the work is assured, and that no licence shall be granted when the author has withdrawn all copies of his work from circulation. It also means that, except as provided under paragraph (8), the licence can be issued only for limited purposes: "to translate the work and publish the work so translated". Because of the limited definition given to the word "publication" in Artricle VI of the Universal Copyright Convention, no licence can be granted under Article V*ter* to distribute the work in the form of sound recordings or in any other form except one "from which it can be read or otherwise visually perceived". Under the terms of Article V, no licence to translate can be granted if an authorized translation in the language in question has been published anywhere during the relevant period of exclusivity, and as long as any previous edition of such a translation is still in print.

(4) It was also considered that, where the copyright owner has made a reasonable offer to license a translation, the prospective licensee's refusal will not entitle him to a compulsory licence.

(5) In this context, the Conference expressly agreed that, where the work for which a translation licence is sought is itself a translation of a copyrighted work, permission must be sought from and denied by, not only the owner of copyright in the intermediate translation, but also the author of the original work on which it is based. This principle would apply equally to any form of adaptation or derivative work incorporating copyrighted material of diverse ownership.

(6) It was also the sense of the Conference that, where a compulsory licence is granted under either Article V*ter* or Article V*quater*, the author or other copyright owner should be notified expressly of the conditions of the licence, including the conditions involving payment and transfer of the compensation due him. A similar point of interpretation is stated in paragraph 39 of the Report of the General Rapporteur of the Berne Revision Conference (B/DC/36) as obliging the competent authority, in cases where a translation or reproduction licence is to be granted, to "take reasonable steps to ensure that the owner of the right has an opportunity to be aware of the application and to take such measures as may seem to him appropriate". Conversely, where the copyright owner is aware of a compulsory licence, paragraph 32 of the Berne Report suggests that, as a condition for terminating the licence by bringing out an authorized edition, "the licensee should be given reasonable notice by the owner of the right of translation, of the publication of a translation authorized by him".

88. Paragraph (9) also deals with the status of a licence granted under Article V*ter* after seven years from the first publication of a work, when any Contracting State, developed or developing, can obtain a compulsory licence under Article V on more liberal conditions than those laid out in Article V*ter*. As the IGCC text had also provided, the licensee in the developing country is given an option: he may simply allow the V*ter* licence to remain in effect or, if he wishes, he may obtain a new licence under Article V by going through all the procedures provided in that Article.

ARTICLE V*quater*

89. After crossing the stormy seas of Article V*ter*, the Conference seemed to be entering a calm harbour when it got to Article V*quater*. For the most part the IGCC text remained intact, and the discussions involved the clarification of details and the need to conform the UCC and Berne texts as much as possible.

90. The provisions of Article V*quater* as a whole are patterned on those in Article V*ter*, but with a number of differences in both substance and form. The substantive differences stem from the different rights involved: translation and publication of the translation of a work on the one hand, and publication of a reproduction of a particular edition of a work on the other. The formal differences stem largely from the fact that, while Article V*ter* is based on Article V and incorporates a number of its provisions by reference, Article V*quater* stands entirely on its own.

91. Sub-paragraph (a) of paragraph (1) establishes the basic rule for compulsory licensing under Article V*quater*. If, after a stated period, copies of a particular edition of a work have not been distributed in a developing country, either to the general public or in connexion with systematic instructional activities, a compulsory licence can be obtained to publish that particular edition in the licensing State. The sub-paragraph adopts a two-way standard as to the price charged for the copies: the copyright owner cannot defeat a licence unless he distributes copies "at a price reasonably related to that normally charged in the State for comparable works", but the copies under a compulsory licence must also be distributed at that or a lower price.

92. A basic condition of the licence is that it be granted solely for publication in connexion with "systematic instructional activities". This term is intended to include not only activities connected with the formal and informal curriculum of an educational institution, but also systematic out-of-school education. Although the possibility of the sale of copies reproduced under a compulsory licence was envisaged, it was also recalled that the competent authority in a developing country to whom a request for a licence has been referred would be under a duty to determine that the licence would fulfill the need of specified "systematic instructional activities". A licence would necessarily be refused if such activities were in fact incidental to the actual purpose of the reproduction.

93. Another important condition of sub-paragraph (a) is implicit in the phrase "particular edition". Where a work has been published in successive editions, the relevant time periods are independent for each edition. Thus, a licence to reproduce the latest edition should be refused even if the applicable time periods for earlier editions have expired. Under paragraph (3) of Article V*quater*, except for audio-visual fixations the works for which licences can be granted are "limited to works published in printed or analogous forms of reproduction".

94. The initial procedure for obtaining a license under Article V*quater* is essentially the same as that provided by Articles V and V*ter*: the prospective licence must have made efforts in good faith to negotiate a licence or to find the owner of the right. The remarks made in this report concerning the corresponding provisions in Article V*ter* are equally applicable in Article V*quater*.

95. Both the delegations of Japan (UCC/11) and the Federal Republic of Germany (UCC/15) proposed, in conformity with the draft text of the revised Berne Convention, to insert, into the provision allowing a licence to issue if a particular edition has ceased to be available in the licensing State, the condition that the edition in question has been unavailable for at least six months. These proposals were adopted, and the provision is now found in sub-paragraph (b) of Article V*quater* (1).

96. The applicable periods of exclusivity, during which no license can be issued under Article V*quater*, for a particular edition, begin on the date of first publication of that edition. The compromise formula adopted in the IGCC text, which varies the terms in accordance with the nature of the work, remained unaltered by the Conference and is found in sub-paragraph (c). In general the period is five years, but a three-year period is applicable to "works of the natural and physical sciences, including mathematics, and of technology", and the term is seven years for "works of fiction, poetry, drama and music, and for art books".

97. As already noted, there are differences between the procedure for obtaining compulsory licenses under Article V and that under Articles V*ter* and V*quater*. A proposal by the delegation of Argentina to establish a more detailed and elaborate procedure (UCC/7) was withdrawn when it received no support.

98. All three Articles (V, V*ter* and V*quater*) require that, in accordance with procedures established by the licensing State, the person seeking a licence must establish one or the other of two facts: either (1) that he had requested a licence and his request has been

denied; or (2) that after "due diligence" he had been unable to find the owner of the right involved. Paragraph 37 of the Report of the Bern Revision Conference states in this context: "It was understood that the request for authorization addressed to the owner of the right must indicate that, if such authorization is denied, the denial might serve as the basis for applying for a [compulsory] licence".

99. Where the owner of the right is known, Article V merely requires the prospective licensee to send him a request and wait for acceptance or denial. Articles V*ter* and V*quater* add an additional requirement in this case: at the same time he makes his request he must also inform either the International Copyright Information Centre established at Unesco, or "any national or regional information centre which may have been designated in a notification to that effect deposited with the Director-General [of Unesco] by the government of the State in which the publisher is believed to have his principal place of business".

100. Where the owner cannot be found, Article V requires the sending of a copy of the application for the compulsory licence to the publisher whose name appears in the copies; and, if the nationality of the owner of the translation right is known, another copy must be sent "to the diplomatic or consular representative of the State of which such owner is a national, or to the organization which may have been designated by the government of that State". Under Articles V*ter* and V*quater*, the copies of the application must be sent by registered air-mail; in addition to the copy required to be sent to the publisher, another copy must be sent to the officially-designated national or regional information centre or, if there is none, to the Unesco Centre.

101. Despite the awkward drafting problems presented by revising the 1952 Convention, this procedural thicket will probably prove less formidable in practice than it now seems, though its density is increased in some cases by the slightly different requirements of the Paris Act of the Berne Convention. The apparent complexity of the censing procedures prompted the delegation of India to put forward a proposal (UCC/37) for a new article stating that, an effort in good faith to comply with the requirements would be considered valid even if there were some deviation from the strict letter of the prescribed procedures. However, the Conference did not accept this proposal, either as an amendment or as an interpretation in the Report. It was pointed out that it is the responsibility of the courts in each country to decide the validity of compulsory licences granted by the authorities in that country, and that an interpretation expressly allowing departures from the requirements of the Convention could produce confusion and unfair results.

102. Sub-paragraph (b) of Article V*quater* (1) provides, in cases where the period of exclusivity is three years, that no licence shall be issued until six months from the date of the request or application. It was the unanimous view of the Conference that, unlike the six-and nine-month periods provided under Article V*ter* (2), the six-month period in Article V*quater* (1)(d) can run concurrently with the three-year period of exclusivity. However, to be consistent with Article V*ter* (2)(b), and to take account of situations when the six-month period ends after the end of the three-year period, the Conference adopted a proposal of the Swedish delegation (UCC/17) to require denial of a compulsory licence if an authorized edition is distributed in the State during the six-month period.

103. A special problem arises under Articles V, V*ter* and V*quater* with respect to how soon a compulsory licence can be granted in cases where the owner of the right cannot be found, and it is handled differently in each of the articles. Article V provides that "the licence shall not be granted before the expiration of a period of two months from the date of the dispatch of the copies of the application". However, this additional period is not provided in Article V*ter*, since grace periods of six or nine months are already required to elapse following the dispatch of the copies of the application. On the other hand, since the six-month grace period provided in Article V*quater* can run concurrently with the basic three-, five-, or seven-year periods of exclusivity, paragraph (1)(d) provides that, where the owner cannot be found, "the licence shall not be granted before the expiration of a period of three months from the date of dispatch of the copies of the application".

104. It was considered that, upon the coming into force of the 1971 Convention in a particular developing country, a large body of literature published more than three, five, or seven years earlier would theoretically become available for compulsory licensing. It was pointed out, however, that copyright owners in developed countries would have the time between signature of the Convention and the date of its coming into force—three months after twelve States have ratified or acceded to it—plus the additional three months following the time other States deposit their instruments or ratification of accession and the coming into force of the 1971 Convention in them, to make arrangements for granting voluntary licences. The Conference agreed that no prospective compulsory licensee should be permitted to send the requests or applications leading to a compulsory licence for any work until after the 1971 Convention has come into effect in his State.

105. Sub-paragraph (f) of Article V*quater* (1) combines several of the safeguard provisions found in Articles V and V*ter* in connexion with translations. The copies of the published reproduction must bear the author's name and the title of the particular edition. The requirement, taken from Article V, that the licence shall not be transferable by the licensee, is included in the provision, as is the extremely important stipulation that "the licence shall not extend to the export of copies and shall be valid only for publication in the territory of the Contracting State where it has been applied for". This provision will be taken up in the next section of the Report.

106. The delegation of the Argentine Republic proposed to amend sub-paragraph (f) by the addition of a clause stating that "any reproduction of the work shall be faithful to the original". When attention was called to sub-paragraph (g), providing that "due provision shall be made by domestic legislation to ensure an accurate reproduction of the particular edition in question", the Argentine delegation agreed to withdraw its proposal on condition that it was accepted that the meaning of the two statements is the same. There was no dissent from this interpretation.

107. Sub-paragraph (h) of Article V*quater* (1) contains an important limitation on the compulsory licensing authority with respect to reproductions of translations. As adopted by the Conference, this provision precludes the granting of a licence for the reproduction

and publication of a work that is itself a translation from another language in either of two cases: (1) "where the translation was not published by the owner of the right of translation or with his authorization"; or (2) "where the translation is not in a language in general use in the State with power to grant the licence".

108. Under the first of these conditions, a State would be precluded from granting a licence to reproduce a translation that itself had been made and published under the compulsory licensing provisions of Article V or V*ter*. This was partly the sense of a clarifying amendment offered by the delegation of Japan (UCC/11), which would have provided that "A licence to reproduce and publish a translation of a work may be granted only if it does not prejudice the right of the author in the original work provided for in paragraph (1) of Article V". The Conference accepted the principle that, where a reproduction of a translation is involved, licences must be sought from the owners of copyright in both the original text and the translation, and the Japanese delegation withdrew its amendment upon condition that the principle be expressed in this Report.

109. Paragraph (2) of Article V*quater* establishes several additional conditions governing the granting of compulsory licences for the publication of reproductions:

(1) The copies distributed under the licence bear the same types of notices as those required in Article V*ter* (4)(b), and discussed in this Report in that connexion.

(2) The requirements for ensuring that the copyright owner receives just compensation and for its payment and transmittal, parallel those in Article V*ter* (5).

(3) As in Article V*ter* (6), a compulsory licence can be cut off if authorized copies of the work are made available in the licensing State under certain conditions. In the context of Article V*quater* (2)(c), the recapture will operate if there is a distribution to the general public or in connexion with systematic instructional activities, at a normal price, of an authorized edition that "is in the same language and is substantially the same in content as the edition published under the licence."

(4) Again, as in the last paragraph of Article V, the granting of a licence is precluded if the author chooses to withdraw all copies of the edition from circulation.

110. Finally, after stating the general rule that the works subject to compulsory licensing under Article V*quater* are "works published in printed or analogous forms of reproduction", subparagraph (b) of paragraph (3) provides for the assimilation to these works of "audio-visual fixations including any protected works incorporated therein", but only if the fixations were themselves "prepared and published for the sole purpose of being used in connexion with systematic instructional activities". Under sub-paragraph (b), amended in accordance with a proposal of the delegation of the United Kingdom (UCC/10), an audio-visual fixation prepared solely for use in curricular education could be licensed for reproduction in audio-visual form for the same limited purpose, if the reproduction is done from a fixation that itself had been lawfully made. The sub-paragraph also allows the reproduction-publication licence to cover the "translation of any incorporated text into a language in general use" in the licensing State.

111. The presence of references to licences covering translation of text incorporated in an audio-visual fixation both in Article V*ter* (8)(b) and in Article V*quater* (3)(b) led to some understandable confusion as to the period of years applicable, and this problem was taken up in a proposal offered by the delegation of Japan (UCC/11). The interpretation of the two provisions that emerged is as follows:

(1) Under Article V*ter* the licence can cover only translation of text for broadcasting purposes. Typically, it would be employed for the translation of the soundtrack of a teaching film or videotape that had been lawfully acquired on the market, and the use of the translation in a new ("dubbed") soundtrack or for visible sub-titles.

(2) Under Article V*quater* (3)(b), the licensee would reproduce the entire audio-visual fixation, and as part of the process he could translate the soundtrack and reproduce the translation aurally or visually along with his reproduction of the visual images. The periods applicable in that situation would vary depending upon the nature of the work in accordance with Article V*quater* (1)(c).

112. In the light of this explanation the Japanese delegation withdrew its proposal. It was also the clear understanding of the Conference that under no circumstances would Article V*quater* (3)(b) serve as the basis for a compulsory licensee justifying reproduction of commercial films or tapes produced for theatrical or other commercial purposes, nor could it justify the reproduction of a cinematographic work based upon a dramatized work of fiction of belles-lettres, since such works were not prepared and published for the sole purpose of use in systematic education.

113. Because of the assimilative nature of sub-paragraph (b) of Article V*quater* (3), some of the terminology in the earlier provisions sounds a little odd when applied to audio-visual fixations. It was understood that, in the context of audio-visual fixation, the concept of "publication" as defined in Article VI included the availability on the open market of copies of fixations incorporating visual images or a combination of sounds and images, which could be bought, leased, or rented. The term "edition" in connexion with audio-visual fixations is considered to refer to a particular version of the work.

INTERPRETATION OF PROHIBITIONS UPON EXPORT AND EXTRA-TERRITORIAL DISTRIBUTION

114. As indicated above in connexion with both Article V*ter* (4)(a) and Article V*quater* (1)(f), a Joint Working Group of the Main Committee of the Universal Copyright Convention and the Berne Convention was formed to consider a proposal for amendment of the Berne Convention presented by a group of African countries. After discussion by the Joint Working Group, it was tentatively agreed that an interpretation of the problem should be included in the Reports of the two Conferences, and a small joint working party, consisting of the delegations of the Ivory Coast, the United Kingdom, the United States of America, and Kenya, met to prepare a text (UCC/32 Add. 1). With certain amendments this text was accepted by the Conference, and appears as paragraphs 115 and 116 of this Report.

115. It follows from the provisions of Article V*ter* (4)(a) and of Article V*quater* (1)(f) prohibiting the export of copies and prescribing that the licence shall be valid only for publication in the territory of the Contracting State where it has been applied for, that these provisions are considered as prohibiting a licensee from having copies reproduced outside the territory of the Contracting State granting the licence. However, it is considered that this prohibition does not apply under the following conditions:

(a) the Contracting State granting the licence has within its territory, no printing or reproduction facilities, or, such facilities exist but are incapable for economic or practical reasons of reproducing the copies;

(b) the country where the work of reproduction is done is a member of the Berne Union or a party to the Universal Copyright Convention;

(c) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in the licensee's country and the contract between the licensee and the establishment doing the work of reproduction so requires, and provides further than the establishment guarantees that the work of reproduction is lawful in the country where it is done;

(d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under Article V*ter* or Article V*quater*; and

(e) all copies reproduced bear a notice in accordance with Article V*ter* (4)(b), and Article V*quater* (2)(a).

It is also understood that the foregoing conditions only apply to works published in printed or analagous forms of reproduction and to the incorporation in audio-visual fixations of translated texts.

It was further understood that this paragraph does not require any country in which the copies are reproduced to permit what would otherwise be an infringement of copyright.

116. It was generally accepted that nothing in Article V*ter* and V*quater* prohibited a compulsory licensee from employing a translator in another country, or other compulsory licensees, licensed to publish a translation in the same language in other countries, from using the same translation, assuming, of course, that the translation has not already been published. The same interpretation applies with respect to persons entrusted with doing the preparatory editorial work.

ARTICLES VI, VII AND VIII

117. These three articles deal respectively with the meaning of "publication", with the Convention's lack of retroactive effect upon the protection of works already permanently in the public domain of a Contracting State, and with matters of signature, ratification, and accession. They had at no time figured in the preparatory work of the Conference, and were accepted verbatim by the Conference without debate.

ARTICLE IX

118. Article IX of the 1971 Convention looks at first glance like just one more "back-of-the-book" provision, but its importance to the Universal Copyright Convention and its future cannot be overestimated. This is the provision that regulates relations between, on the one hand, States party to the 1952 text who never accede to the 1971 text and, on the other, States who accede only to the 1971 text. Since this is the first revision of the Universal Copyright Convention, the pattern for Article IX being set in the 1971 text seems likely to last as long as there is a UCC.

119. The first two paragraphs of Article IX attracted no discussion, and were adopted by the Conference without change from the IGCC text. Paragraph (1) simply provides that the 1971 Convention will come into effect three months after twelve States have deposited their instruments of ratification, acceptance or accession, and paragraph (2) adds that thereafter the Convention will come into force in a State three months after its instrument has been deposited.

120. Paragraph (3), which was also accepted without debate, does deserve special note. In effect it provides that, if a State is not party to the 1952 Convention and accedes to the 1971 Convention, it automatically becomes a party to the 1952 Convention and that, after the 1971 Convention comes into force, no further accessions to the 1952 Convention alone will be possible. This assures the existence of a common text between any two UCC members, thus providing a legal basis for their mutual copyright obligations, but at the same time allows the 1971 text eventually to supersede the 1952 text as it attracts more and more ratifications and accessions.

121. The problem for developing countries at Paris was, to the fullest extent possible, to gain assurance that developed UCC countries would allow the provisions of Articles V*bis*, V*ter* and V*quater* to be applied to their works. The IGCC text sought to provide some assurance by a system under which a developed country party only to the 1952 Convention could make a formal notification that it would not allow the 1971 Convention to be applied to its works; the negative implication would have been that the failure to file the notification meant that the 1971 Convention could be applied.

122. To the expressed regret of several delegates, this scheme did not survive at the Paris Conference. The objections to it were juridical in nature, based on the principle that under no circumstances can a State be bound or be presumed to be bound, by a text it has not accepted.

123. It was apparent at the 1971 Conference that the views on this point were too strong to allow for adoption of the formula of the IGCC text, and an alternative plan was put forward jointly by the delegations of Austria, Denmark, Finland, Japan, Norway, Sweden and Switzerland (UCC/21), and separately by the delegation of France (UCC/23). These two amendments of paragraph (4), though worded differently, would have reached the same result: where State X is party only to the 1952 Convention and State Y is party to both

the 1952 and the 1971 Conventions, their relations are governed by the 1952 Convention; but State X may notify the Director-General of Unesco that it will allow State Y to apply the 1971 Convention to its works.

124. What finally emerged as paragraph (4) of Article IX, after a long debate and three votes, was a formula different from either the IGCC text or the scheme of UCC/21 and UCC/23. Under the final text, a State party only to the 1952 Convention may, by notification, declare that it will admit the application of the 1971 Convention to its works "by all States Parties to this Convention". This formula, which was based on a proposal of the delegation of the Federal Republic of Germany, does not permit a State party only to the 1952 text to select from among the States party to the 1971 Convention those it will allow to apply the new text to its works.

125. The provision adopted has the following results where State X is party to the 1952 Convention only, and States Y and Z are party to both the 1971 and (automatically, perhaps) the 1952 text:

(1) The general rule is that, although the relations between State Y and Z are governed by the 1971 text, their separate relations with State X are each governed by the 1952 text.

(2) If State X chooses to file a notification allowing States Parties to the 1971 text to apply that text to its works, the privileges must extend to both States Y and Z equally and without requiring any acceptance on their part.

(3) If State X does make the notification and does not ratify the 1971 Convention, it cannot claim any rights under the 1971 Convention with respect to its own works.

126. At the outset of the debates the delegation of Kenya expressed some hope that, under a system of notifications, developed countries would be able to make notifications accepting the application of the less stringent requirements of the 1971 Convention even in advance of the coming into force of the new Convention. However, the idea of advance notifications, as under Article V of the Stockholm Protocol, was dropped and not revived. It is clear from the text of Article IX (4) as adopted that notifications by States party only to the 1952 Convention allowing the application of the 1971 Convention will have effect only after the 1971 Convention has come into force, and then only with respect to countries bound by it.

127. The main issue during the debates was whether State X, the party to the 1952 Convention, could make its notification selective as to the 1971 countries affected by it. The delegation of France took a position in favour of the principle that, under theories of national sovereignty, a State should be left free to name those countries it would allow to apply the terms of a treaty to which it was not a party. The delegation of the United Kingdom did not feel that this was a serious problem; since no developed country now party to the UCC would be required to change its law to ratify the 1971 Convention, there would be little reason for them to make a notification of acceptance rather than ratifying the entire Convention. The delegation of the Federal Republic of Germany agreed, noting that the only practical question in this context relates to the liberalization of the compulsory licence for translations of Article V of the 1952 Convention by Article V*ter* of the new Convention.

ARTICLE X

128. This article, which requires States Parties to the Convention to implement its provisions under domestic law, was accepted by the Conference with an amendment proposed by the delegation of Austria (UCC/19). Under the 1952 text a State was obliged to be able to give effect to the terms of the Convention at the time its instrument of ratification, acceptance or accession is deposited. Under the amendment an additional period of at least three months is allowed, that is, to the date when the Convention comes into force in the State. It was understood that, in cases where the constitution of a Contracting State provides that treaties are self-executing, not separate legislation would be necessary to implement any provisions of the 1971 Convention that are, by their nature, susceptible of direct application.

ARTICLE XI AND RESOLUTION CONCERNING ARTICLE XI

129. A problem of both practical and theoretical significance is presented by Article XI, which establishes the Intergovernmental Committee of the Universal Copyright Convention, and the resolution concerning it, which delineates the procedures governing the membership and election procedure of the Committee. It was agreed, from the outset, that the Committee should be enlarged from its present 12 members, and although there were differences as to how it should be composed, a total membership of 18 seemed generally acceptable. The real root of the problem involved the fundamental question of whether we will have one Convention, two separate Conventions, or a system involving two Conventions in one. No absolutely clear-cut answer to this question emerged at the Paris Conference, but the debates and their results lend weight to the following conclusions:

(1) No one can seriously argue that, following the entry into force of the 1971 Convention, there is only one Universal Copyright Convention.

(2) Conversely, the action of the Conference on Article IX, and particularly on Article XI, precludes the argument that there will be two completely separate, independent, and legally unrelated Conventions.

(3) The final result, in general terms, is that there will be two Conventions sharing the same name and a number of the same provisions, and with links between them.

This analysis, which seems to reflect the thinking of most delegations, leads to severe practical problems concerning the composition and membership of the Intergovernmental Copyright Committee administering the Convention of 1971. Under the circumstances there seemed no better solution than the proposed draft of Article XI.

130. Paragraph (1) of Article XI prescribes the duties of the Intergovernmental Committee, and, as amended, its terms of reference comprehend "the Universal Copyright Convention", meaning either or both texts. The delegation of Cuba made clear that it would be required to vote against this Article because of its references, in paragraphs (1)(c) and (4), to the Organization of American States which, in the opinion of the Cuban delegate, in addition to other considerations set forth during the plenary session is not an intergovernmental organization that should be placed on the same footing

as UNESCO, the Berne Union, or the World Intellectual Property Organization. In a later context, Dr. Saba presented the reasons for including the Organization of American States and pointed out that this organization was mentioned in the 1952 text of the UCC.

Paragraph (2) of the IGCC text had provided simply that "the Committee shall consist of the representatives of eighteen Contracting States". A suggestion made during the first discussion of the problem in the Main Commission produced a text referring to "representatives of eighteen States party to this Convention or only to the 1952 Convention", and this was accepted. A later proposal by the delegation of Brazil aimed at eventually restricting membership on the IGCC to States party only to the 1971 Convention was voted upon and narrowly defeated (15 votes for, 17 against, with two abstentions). The same point was also raised in the context of the resolution accompanying Article XI, and will be discussed below. The remainder of Article XI itself was accepted without much further discussion. In connexion with paragraph (3), the delegation of Japan emphasized the great importance of balancing the Committee geographically and of increasing Asian membership in the Convention.

131. The result appears to be that, after the coming into force of the 1971 Convention, the Intergovernmental Copyright Committee will, in strict legal terms, consist of two committees merged into one. However, the sittings and work will be done together, and the decisions will be taken in the name of the Intergovernmental Copyright Committee as a single body.

132. Turning to the resolution accompanying Article XI, paragraphs (1), (2) and (3) were adopted without extensive debate. It was the understanding of the Conference that the new 18-member Committee would have no legal standing or competence until the 1971 Convention has come into force.

133. A proposal by the delegations of Brazil and Tunisia (UCC/30) would have added a new paragrpah (1)*bis*, reading as follows: "Any States that have not ratified this Convention before the second ordinary session following the entry into force of this Convention shall be replaced by States Parties to this Convention designated by the Committee in conformity with the provisions of paragraph (3) of Article XI". This met with opposition from several delegations, including that of the Federal Republic of Germany, which pointed out that the compulsory exclusion of States Parties to the 1952 Convention only, could justify, and might well produce, separate Intergovernmental Copyright Committees for each Convention. When the question was put to a vote, the proposal of Brazil and Tunisia was narrowly defeated (14 votes for, 15 against, with five abstentions).

134. With respect to paragraph (4) of the resolution, it was agreed to amend the IGCC text to provide for two Vice-Chairmen and to have staggered terms of office from the outset. A proposal of the delegation of Italy (UCC/22 Corr. 1) would have added, following expression of the wish that Unesco provide the secretariat of the IGCC, the words: "if possible in liaison with the World Intellectual Property Organization". The Italian delegate recalled that Italy had been in the forefront of proposals to provide special copyright provisions in favour of developing countries, and had supported the idea of a link between the two Conventions for this purpose. Recognizing that a

formal link was impossible in the present situation, he nevertheless expressed the hope that the excellent spirit of co-operation and co-ordinated endeavour now existing between Unesco and WIPO would continue and become even stronger.

135. Mr. Claude Lussier, representing the Director-General of Unesco at the Paris Conferences, reviewed the complex historical, legal, and jurisdictional questions raised by the Italian proposal. He recalled the full and productive co-operation between the secretariats in the past and at the present meeting, and he felt that, if this is what the word "liaison" refers to, no amendment of the resolution is necessary. He reiterated the firm determination of Unesco to continue to assume its full responsibilities in the field of copyright. A number of delegations underlined their satisfaction with the present co-operative work of the two secretariats, and expressed the hope that this co-operation would continue and expand in the years to come. Several delegations, notably those of France and Brazil, expressed their opposition to further formal links between the Berne Union and the Universal Copyright Convention. The United Kingdom delegate, while favouring a single secretariat under WIPO auspices as an ultimate goal, recognized that this was not possible at the present time. The delegation of Italy having declared that it would not insist upon maintaining its proposal, the Conference agreed that, in reporting this debate, the Report should clearly reflect its view that the relations between the Unesco and WIPO Secretariats and the collaboration between the Committees of the two Conventions have been excellent in the past, and its hope that this harmonious and close co-operation should continue in the future.

136. At one of the closing plenary sessions, proposals for amendment of the resolution by the delegations of Israel (UCC/36) and the United Kingdom (UCC/38) were considered together, and with certain amendments the Israeli proposal was adopted as paragraph 2 of the resolution. It provides that any State that is not party to the 1952 Convention, and that has not acceded to the 1971 Convention before the first ordinary session of the new Intergovernmental Committee, would be replaced by another State to be chosen by the other members of the Committee. The Conference then proceeded to elect six additional members of the new Intergovernmental Committee by acclamation: Algeria, Australia, Japan, Mexico, Senegal and Yugoslavia. The delegation of Israel, while expressing no disagreement with this list, hoped that in the future greater attention would be given to the principle of equitable geographical distribution, as well as stronger representation from countries in an intermediate stage of development. Several other delegations supported this view, and the delegation of Austria stressed that developed countries with small populations should in future be given more adequate representation on the Committee.

ARTICLES XII–XVI

137. Article XII, dealing with the convening of conferences for future revisions of the Universal Copyright Convention, was amended to give the prerogative of convening a revision conference to the Intergovernmental Committee, either at its own initiative or at the request of at least ten States party to the 1971 Convention. A new

paragraph was added to Article XIII making clear that the action of a Contracting State, in declaring the Convention applicable to a country or territory "for the international relations of which it is responsible", cannot imply "recognition or tacit acceptance" of any political situation by another Contracting State. The IGCC text of Article XIV, and the original text of Article XV, were adopted by the Conference without change. In paragraph (2) of Article XVI, Arabic was added to German, Italian and Portuguese as one of the languages in which an official text of the Convention is to be established.

ARTICLE XVII AND THE APPENDIX DECLARATION

138. Article XVII and its Appendix Declaration constitute the "Berne Safeguard Clause", one of the major compromises of the Geneva Conference establishing the UCC in 1952. The provision as it now exists makes the Berne Convention predominant over the UCC as between two countries, both of which belong to the two Conventions; and, equally important, it would preclude a Berne country from leaving the Berne Union and relying on the Universal Convention for protection of its works in Berne Union-UCC countries. The IGCC text would remove the latter condition with respect to developing countries, leaving them free, without fear of retaliation or loss of protection, to be party to either or both Conventions.

139. An amendment proposed by the delegation of Portugal (UCC/25) would have gone much further. In effect, it would have removed the danger of retaliation for all Berne members, developed, developing, or in an intermediate stage, by attaching no consequences, under the UCC, if any country chose to denounce the Berne Convention. This proposal attracted a sympathetic response, but it received little support and general opposition. In withdrawing his proposal the delegate of Portugal reiterated his country's opposition to the system of coercion implicit in the "Berne Safeguard Clause", and declared that Portugal would oppose any future efforts to increase the level of protection under Berne unless they were accompanied by the restoration of a climate of free choice, which he considered essential in international copyright matters. Following this debate the Conference adopted Article XVII and the Appendix Declaration as proposed in the IGCC text, subject to minor drafting amendments.

ARTICLES XVIII–XXI

140. The remaining articles were adopted as proposed in the IGCC text, with a few minor technical amendments.

THE PROTOCOLS

141. The delegation of the Federal Republic of Germany proposed (UCC/29) that, to avoid any doubt as to their application, the Conference adopt two new Protocols, corresponding in effect to Protocols 1 and 2 of the 1952 Convention, to the 1971 Convention. Because of the complex network of interrelationships among the 1952 and 1971 texts and Protocols, this proposal required some intricate revisions, but was accepted in substance by the Conference. It was understood that the meaning of the word "refugees" in Protocol 1 is not capable

of precise definition, but that the interpretations given to the term in various international instruments, including the Geneva Convention of 28 July 1951, should be taken into account.

A PERSONAL AFTERWORD

142. Before I lay down my pen as your General Rapporteur I am impelled to express my thanks to all those who have assisted in the preparation of the Report. Those of my own delegation who contributed to it, especially my colleague and close friend, Barbara Ringer, know already of my gratitude, but there are others who deserve some special recognition.

143. I feel a great sense of obligation first of all, to the Unesco Secretariat, including Dr. Saba, Mr. Claude Lussier, and Miss Marie-Claude Dock, the General Secretary of the Conference, for their unfailing courtesy, co-operation and assistance. From my observation of Miss Dock and her dedicated staff over this and countless earlier meetings, I am convinced that they have learned the secret of how to live indefinitely without sleep, and are not revealing it to the delegates for fear the meetings would then go on 24 hours a day rather than merely fifteen. To anyone who has wondered how mountains of documents magically appear daily in three languages during a meeting like this, I suggest that he take a look behind the scenes at the astonishing amounts of time and effort involved.

144. Next, like a few other old copyright campaigners at this Conference, I am aware that Salle X of Unesco House was haunted by the spirits of some of the great men to whom we owe the existence of the Universal Copyright Convention. To a generation completely unfamiliar with their names, I cannot resist citing a few of them here: Marcel Plaisant, Henry Puget, Plinio Bolla, Antonio Pennetta, François Hepp, Sir John Blake, who was Rapporteur-Général at Geneva and whose report puts this to shame, and finally my friend and mentor, Arthur Fisher.

145. I have announced my early retirement as Register of Copyrights of the United States of America, and the success of this Conference is a good deal more than a source of pride to me. Albert Camus said in 1948:

> "Let us suppose that certain individuals resolve that they will consistently oppose to power the force of example; to authority, exhortation; to insult, friendly reasoning; to trickery, simple honour. Let us suppose they refuse all the advantages of present-day society and accept only the obligations that bind them to other men. Let us suppose they devote themselves to orienting education, the press, and public opinion toward these principles. They would be preparing the future. Who can fail to see the positively dazzling realism of such behaviour?"

146. When I come to look again at this Report in the years to come, and reread Camus' moving words at its end, I will not think first of the accomplishments of this Conference, great as they are. Before anything else I will remember the men and women whose dazzling realism at these Conferences has indeed prepared the future of international copyright.

ABRAHAM L. KAMINSTEIN.

JULY 24, 1971.

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